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Executive Summary

This deliverable of Work Package No 5 assesses the engagement of the EU with the AU and other intergovernmental organisations in Africa. Through the Joint Africa-EU Strategy (JAES), the EU and its member states on the one hand and the AU and African states on the other hand have committed themselves to work towards the realisation of joint values such as human rights. The deliverable consists of eight chapters.

The first chapter sets out the aims, conceptual framework, methodology and structure of the report.

The second chapter explores the place of human rights and multilateralism in the EU, with a focus on the EU treaties, guidelines on human rights and the EU Strategic Framework and Action Plan on Human Rights.

The third chapter discusses the institutional framework related to promotion and protection of human rights in the AU and other African intergovernmental organisations with a human rights mandate such as the EAC and ECOWAS. The chapter also consider the major EU human rights stakeholders of relevance to relations with Africa.

The fourth chapter considers substantive goals and objectives in relation to the EU human rights policy towards Africa and goals and objectives enshrined in international agreements between the EU and African states, including the Cotonou Agreement and JAES. The chapter further discusses the JAES roadmap and action plans, sub-regional cooperation strategies and EU member state initiatives in relation to human rights.

The fifth chapter studies the tools and methods employed by the EU at African intergovernmental organisations. Particular attention is given to the human rights dialogue between the EU and the AU. The chapter also considers other initiatives such as the Africa-EU Platform for Dialogue on Governance and Human Rights, the EU-Africa Summit, the EU-Africa High Level Policy Dialogue, the Commission-to Commission meetings and sub-regional political dialogues.

The sixth chapter considers the EUs and its member states important role in providing financing for the AU and other African intergovernmental organisations. The chapter consider issues such as aid earmarking and coordination.

The seventh chapter consists of two case studies, one focusing on food security and the other on human rights defenders.

The report illustrates how the relationship between the EU and the AU and other African regional IOs has become more equal in recent years and that Africa is now treated as one unit, represented by the AU. Challenges remain in relation to making the relationship functioning effectively, in particular in light of the numerous actors involved in EU-Africa relations, including EU and AU member states, AU institutions, RECs and civil society actors. The effectiveness of interventions such as the EU-AU human rights dialogue in promoting EU human rights strategies is questionable, in particular in light of the divergent opinions on many issues despite the slogan of 'two unions, one vision'. Financing from the EU plays an important role for African intergovernmental organisations to perform their functions. However, reliance on donor funding remains controversial and coordination among donors could still be improved.

List of abbreviations

ACP	African, Caribbean and Pacific Group of States
AFSD	Agriculture and Food Security Division (AU Commission)
AGA	African Governance Architecture
AGRA	Alliance for a Green Revolution in Africa
AMU	Arab Maghreb Union
AP	Action Plan
APF	African Peace Facility
APRM	African Peer Review Mechanism
APSA	African Peace and Security Architecture
ASF	African Standby Force
AU	African Union
AUC	African Union Commission
AUSP	African Union Support Programme
CAADP	Comprehensive Africa Agriculture Development Programme
CEN-SAD	Community of Sahel-Saharan States
CFSP	Common Foreign and Security Policy
COAFR	Council Africa Working Party
COHOM	Council Working Party on Human Rights
COMESA	Common Market for Eastern and Southern Africa
COREPER	Permanent Representatives Committee
CSDP	Common Security and Defence Policy
CSO	Civil Society Organisation
DAC	Development Assistance Committee (OECD)
DCI	Development Cooperation Instrument
DFID	Department for International Development (UK)
DROI	Subcommittee on Human Rights of the European Parliament
EAC	East African Community
ECCAS	Economic Community of Central African States
ECD	European Consensus on Development
ECHO	EU Humanitarian Aid and Civil Protection Department
ECOWAS	Economic Community of West African States
EDF	European Development Fund
EEAS	European External Action Service
EEC	European Economic Community
EIDHR	European Instrument for Democracy and Human Rights
ENP	European Neighbourhood Policy
EPA	Economic Partnership Agreement
ERM	Early Response Mechanism
EU	European Union
EU-AITF	EU-Africa Infrastructure Trust Fund
EUSR	EU Special Representative for Human Rights
EWS	Early Warning System
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GNI	Gross National Income
HR/VP	High Representative for Foreign Affairs and Security Policy
HRD	Human Rights Defender
IGAD	Intergovernmental Authority on Development
JAES	Joint Africa-EU Strategy

LGBTI	Lesbian, Gay, Bisexual, Transgender and Intersex persons
MDGs	Millennium Development Goals
MMWP	Making Markets Work for the Poor
IO	Intergovernmental organisation
NEPAD	New Partnership for Africa's Development
PanAF	Pan-African Programme
PAP	Pan-African Parliament
PCD	Policy Coherence for Development
PDGHR	Africa-EU Partnership on Democratic Governance and Human Rights
PFSSR	
PSC	Policy Framework on Security Sector Reform
PSC	Peace and Security Council (AU)
PSO	Political and Security Committee (EU)
REC	Peace Support Operation
RELPA	Regional Economic Community
RTFS	Regional Enhanced Livelihoods for Pastoral Areas
SADC	Regional Trade in Food Staples
SLWM	Southern African Development Community
TEU	Sustainable Land and Reliable Water Management
TFEU	Treaty on European Union
UN	Treaty on the Functioning of the European Union
US	United Nations
	United States

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‘Relations between the European Union and Africa rank first among the EU’s top political priorities. Both continents are bound by strong ties of friendship and interconnected future.’¹

I. Introduction

A. Aim

Considering that the European Union (EU) is committed to ‘develop relations and partnerships with ... regional organisations which share [its] principles’,² the aim of this study is to critically map and provide an assessment of the EU’s intricate and long-established cooperation within and towards the African Union (AU) (until 2002 the Organisation of African Unity (OAU)) and other African inter-governmental organisations (IOs).

The relationship between European and African countries has a long history, has taken many forms and is perceived differently by different actors depending on the assessor’s experience, perspective and interests.³ It has gone from a colonial-colonised relationship to a confrontational one and more recently to a consultative engagement between the two continents,⁴ with increased multilateral engagement between the EU and the AU.

This new relationship between ‘one Africa’ and ‘one Europe’ is geared towards an ambitious goal of ‘two unions, one vision’.⁵ The nature and scope of the relationship is such that it is meant to be beyond development aid and trade, to include issues of political concern; beyond Africa, to address not only African matters but global issues; beyond institutions, to ensure the participation of the people and the strengthening of the civil society; and beyond a fragmented approach to Africa, to find regional and continental responses.⁶

Respect for human rights and good governance has for decades figured prominently in the major frameworks guiding the relationship between the two continents. These partnership framework agreements include the Cotonou Agreement with the African, Caribbean, Pacific (ACP) group of

¹ Jose-Manuel Barroso, President of the European Commission quoted in ‘The Africa-EU partnership - 2 unions, 1 vision’ 7.

² Art 21(1) TEU.

³ Jack Mangala ‘Africa-EU partnership on democratic governance and human rights’ in Jack Mangala (ed.) *Africa and the European Union: A strategic partnership* (Palgrave 2012) 77.

⁴ Mangala (n 3) 74. See also interview with AU official, May 2015.

⁵ See http://www.africa-eu-partnership.org/sites/default/files/documents/jaes_en_brochure_final_web.pdf.

⁶ The Africa-EU strategic partnership: A joint Africa-EU strategy 2007 para 26.

states;⁷ the European Neighbourhood Policy;⁸ the so-called Barcelona Process,⁹ Euro-Mediterranean Partnership (now European Neighbourhood Policy) with North African states (Morocco, Algeria, Tunisia, Libya, Egypt), as well as the Union of the Mediterranean¹⁰ and now the EU-Africa Partnership.

The AU, comprising 54 states is the main regional body in Africa. Its activities are complemented by eight Regional Economic Communities (RECs) recognised by the AU as building blocks towards an African Economic Community: the Arab Maghreb Union (AMU); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); East African Community (EAC); Economic Community of Central African States (ECCAS); Economic Community of West African States (ECOWAS); Intergovernmental Authority on Development (IGAD); and Southern African Development Community (SADC).

The relationship between the EU and AMU is not covered in this report as the focus is on EU's relationship with pan-African and sub-Saharan African IOs. The research will also touch on the relationship between the EU and the ACP Group of States and the African negotiating groups for Economic Partnership Agreements (EPAs) to the extent that these differ from the RECs. The relationship with ACP and the role of EPAs will be discussed in more detail in D6.4.

This report critically assesses the EU's engagement with African IOs and their institutions with relevance for human rights promotion and protection with a view to understand the EU's role in shaping the policies of these IOs and ensure their effective functioning, including through financial contributions. In addition to a critical assessment of the EU's role *vis-à-vis* these organisations, ways to facilitate a critical but constructive and effective relationship will be explored.

In addition to agreements and policies of the EU as such, the actions of the EU institutions (eg Council, EU Human Rights Working Group (COHOM), EU Commission, European External Action Service (EEAS) and the European Parliament) will be considered as well as policies and actions of individual EU member states towards African IOs.

B. Conceptual Framework: Coherence, consistency and effectiveness

The '**coherence**' and '**consistency**' of human rights policies constitutes one of the biggest challenges for the EU.¹¹ For the sake of this report coherent EU policymaking is defined as

'policymaking that seeks to achieve common, identifiable goals that are devised and implemented in an environment of collaboration, coordination and cooperative planning

⁷ According to Article 9 of the Cotonou Agreement, 'respect for human rights, democratic principles and the rule of law are essential elements of the partnership', while good governance is considered to be a 'fundamental element.' Article 96, which gives teeth to the political dialogue, allows for the suspension of co-operation in the result of serious violations of the essential elements by the State Parties.

⁸ For more details see http://eeas.europa.eu/enp/index_en.htm.

⁹ For more details see http://www.eeas.europa.eu/euromed/barcelona_en.htm.

¹⁰ For more details see <http://ufmsecretariat.org/who-we-are/>.

¹¹ This chapter is based on Grażyna Baranowska, Anna-Luise Chané, David D'Hollander, Agata Hauser, Jakub Jaraczewski, Zdzisław Kędzia, Mariusz Lewicki and Anna Połczyńska 'Report on the analysis and critical assessment of EU engagement in UN bodies', FRAME Deliverable 5.1, 2014, ch I.B.1.

among and within the EU Institutions, among the EU Institutions and Member States, as well as among EU Member States.¹²

Whether the concept of 'consistency' overlaps with 'coherence' or whether it is reduced to a temporal, geographical or personal dimension and thus narrower, is subject to debate. While relevant scholarship commonly uses the term 'coherence',¹³ EU treaty law – and consequently EU linguistic usage more generally – refers to 'consistency'.¹⁴ The present report will follow the EU approach and employ a broad and overlapping understanding of 'coherence' and 'consistency', encompassing the above definition as well as the element of uniform action over time and across comparable situations.

The coherence and consistency of EU human rights policies in its cooperation with African intergovernmental organisations can be measured across three different dimensions:¹⁵

- **Internal-external consistency:** This level captures the degree to which the EU applies internally what it promotes externally. It is one of the most frequently voiced criticisms of third countries that the EU 'does not practice what it preaches'. Common examples of perceived weaknesses in the EU's own human rights record include the EU's treatment of Roma people, the way it addresses racism and xenophobia within its borders, its lack of protection of and respect for economic and social rights – particularly during the economic crisis.¹⁶ Addressees of the Union's internal human rights dimension are not only the EU institutions but also the individual Member States, who act as 'ambassadors of EU human rights values'.¹⁷
- **External-external consistency:** This dimension refers to the degree of uniformity in which the EU promotes human rights externally, both with regard to individual human rights issues and with regard to individual third country partners. It has for example been criticised that the EU places a stronger focus on the promotion of civil and political rights, to the detriment of economic, social and cultural rights.¹⁸

¹² 'Coherence (and consistency)' FRAME Internal Fact Sheet, 2014, 1; see also Tamara Lewis, Wolfgang Benedek and Anna Müller-Funk, 'Report on coherence of human rights policymaking in EU Institutions and other EU agencies and bodies', FRAME Deliverable 8.1, 2014, <www.fp7-frame.eu/wp-content/materiale/reports/06-Deliverable-8.1.pdf>.

¹³ Cf Pascal Gauttier, 'Horizontal coherence and the external competences of the European Union' (2004) 10 *European Law Journal* 23; Carmen Gebhard, 'Coherence' in Christopher Hill and Michael Smith (eds) *International relations and the European Union* (Oxford University Press 2011) 101; Christophe Hillion, 'Tous pour un, un pour tous! Coherence in the external relations of the European Union' in Marise Cremona (ed) *Developments in EU external relations law* (Oxford University Press 2008) 10; Clara Portela and Kolja Raube, 'The EU Polity and Foreign Policy Coherence' (2012) 8 *Journal of Contemporary European Research* 3; Leonhard den Hertog and Simon Stroß 'Coherence in EU External Relations: Concepts and Legal Rooting of an Ambiguous Term' (2013) 18 *European Foreign Affairs Review* 373; Anne-Claire Marangoni and Kolja Raube, 'Virtue or Vice? The Coherence of the EU's External Policies' (2014) 36 *Journal of European Integration* 473.

¹⁴ See only Treaty on European Union, art 18(4): '[The HR/VP] shall ensure the consistency of the Union's external action.'

¹⁵ Based on keynote lecture by EU Special Representative for Human Rights, Stavros Lambrinidis, Interparliamentary Committee Meeting with EU National Parliaments, European Parliament Subcommittee on Human Rights, 25 September 2013.

¹⁶ Grainne de Burca, 'The Road Not Taken: The European Union as a Global Human Rights Actor' (2011) 105 *American Journal of International Law* 649, 687.

¹⁷ *ibid.*

¹⁸ Gjovalin Macaj and Joachim A. Koops, 'Inconvenient multilateralism: The challenges of the EU as a player in the United Nations Human Rights Council' in Jan Erik Wetzel (ed), *The EU as a 'Global Player' in Human Rights?* (Routledge 2011) 75 et seq.

- **Internal-internal consistency:** This last level captures the degree to which all representatives of EU institutions and EU Member States convey a uniform message about a particular country-specific or thematic human rights issue in the entirety of EU external action. The added value of the Union's 'multiple voices' has frequently been pointed out. However, it is important that all actors 'sing from the same song sheet'.¹⁹

Inconsistency can arise particularly if the following factors apply: '[1] Structures are ill-designed, leading to a lack of coordination in policy design or policy implementation; [2] Frameworks have competing visions or overlapping responsibilities; [3] Interests diverge or conflict among policy goals'.²⁰

Lack of coherence and consistency leads to a loss of credibility as a human rights actor, and thus considerably reduces the impact of EU cooperation with African intergovernmental organisations. It is one of the most common and persistent criticisms that the EU faces. In the past years numerous policy initiatives have addressed this issue but provided only partial remedies.²¹ This report will therefore aim to identify and analyse instances and patterns of incoherence and inconsistency. It will conclude with recommendations on how these issues could be successfully addressed.

The concept of '**effectiveness**' refers to the 'effects or impacts of a policy'.²² It is a multidimensional concept that can be conceptualised along several dimensions including

- **goal attainment/problem solving effectiveness**, which refers to the degree to which specific policy goals are achieved;
- **process effectiveness**, which refers to the degree to which the policies are adopted;
- **behavioural effectiveness**, which focuses on the degree to which policies generated differences in behaviour and practices of key-actors;
- **constitutive effectiveness**, which refers to the acceptance of policies by a large group of stakeholders.²³

Within the scope of this report the term will be used in the sense of goal attainment effectiveness, addressing whether or not the EU achieves to successfully promote its human rights policies and values in its cooperation with African regional organisations.

¹⁹Lambrinidis (n 15).

²⁰ FRAME (n 12) 2.

²¹ For example the closer cooperation between COHOM and FREMP, the appointment of the EU Special Representative for Human Rights, but also the institutional reforms of the Lisbon Treaty in general. For more detail see the forthcoming reports of FRAME Work Package 8: 'Coherence among EU Institutions and Member States'.

²² 'Effectiveness', FRAME Internal Fact Sheet, 2014, 1.

²³ *ibid*; see for more detail the wealth of academic scholarship on the definition and measurement of effectiveness, e.g. Anna Tikina and John Innes, 'A framework for assessing the effectiveness of forest certification' (2008) 38 Canadian Journal of Forest Resources 1357; Oran R. Young, 'The effectiveness of international governance systems' in Oran R. Young (ed), *International Governance: Protecting the Environment in a Stateless Society* (Cornell University Press 1994) 140.

C. Methodology

The research for this report is based on the analysis of primary and secondary sources.

Primary sources analysed for this report include official documents from the EU, the AU and other African IOs.

EU documents were collected using the Official Journal of the EU,²⁴ the EUR-Lex database,²⁵ the public register of the Council of the European Union²⁶ and the conclusions database on the website of the European Council.²⁷ The methods of analysis range from keyword searches to textual and legal analyses, depending on the type of document and the research context. Documentation on the Africa – EU Partnership was collected on the website of the Partnership.²⁸ Documents of AU and RECs were collected on the websites of the respective organisations. It should be noted that the AU and African RECs do not maintain comprehensive databases similar to those of the EU and the UN.

Secondary sources used for this report include published academic articles and books, working papers and policy reports. They were collected through surveys in various databases and library catalogues.

Interviews were conducted in person or by phone with high-level AU officials to clarify facts and to get their impression of the partnership.

D. Structure

Following this introductory chapter, this report provides a brief overview of the place of human rights and multilateralism in the EU (chapter II). Thereafter the relevant normative and institutional framework of the AU and other African IOs is mapped followed by an overview of the major EU human rights stakeholders in relation to Africa (chapter III). Chapter IV deals with the substantive goals and objectives of the EUs human rights policy in relation to Africa and includes analysis of the EUs own policies, and joint agreements, strategies and action plans including the Cotonou Agreement and the Joint Africa-EU Strategy. Chapter V considers the tools and methods used by the EU with a focus on the human rights dialogue with the AU. Chapter VI considers the EUs financial contribution to the AU and other African IOs in relation to human rights. Chapter VII sets out two case studies, one on food security and the other on human rights defenders. The final chapter presents the conclusions of the research.

²⁴ See <<http://eur-lex.europa.eu/oj/direct-access.html>>.

²⁵ See <<http://eur-lex.europa.eu/>>.

²⁶ See <<http://register.consilium.europa.eu/content/int?lang=EN&typ=SMPL>>.

²⁷ See <<http://www.european-council.europa.eu/council-meetings/conclusions>>.

²⁸ See <<http://www.africa-eu-partnership.org>>.

II. The place of human rights and multilateralism in the EU

This section tackles the place of human rights and multilateralism in EU external policy. It presents the relevant Treaty provisions, EU strategic documents and other acts related to human rights. The aim of this section is to analyse the EU's human rights priorities and their consistency throughout the relevant documents.

A. European Union Treaties

1. General principles of EU external action

The Lisbon Treaty has significantly strengthened the place of human rights in the EU, not only internally (the binding force of the Charter of Fundamental Rights), but also externally, by putting human rights in a central place amongst the principles of EU external action.²⁹ Article 3 (5) TEU states that 'in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the *protection of human rights, in particular the rights of the child*, as well as to the strict observance and the development of international law, including *respect for the principles of the United Nations Charter*' (emphasis added). Moreover, Article 21 TEU marks a general commitment of the EU to universal and indivisible human rights in EU external relations.³⁰ However, it does not set out any specific priorities or objectives in this field. Therefore, according to Article 22 (1) TEU, the European Council is tasked with the identification of the EU's strategic interests and objectives on the basis of the general principles and objectives set out in Article 21.

2. Principles in the matters of Common Foreign and Security Policy (CFSP)

The specific principles of the CFSP are set out in Article 24 (2) and (3) TEU, but human rights are not mentioned in these provisions. However, according to Article 23 TEU, all EU's actions in the field of CFSP are to be guided by principles and objectives set out in Article 21 TEU, mentioned above.

²⁹ For a comparison of the internal/external provisions related to human rights cf Grainne de Búrca, 'The Road Not Taken: The European Union as a Global Human Rights Actor' (2011) 105 American International Law Journal 682-685.

³⁰ 'the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law (emphasis added)'. Article 21 (2) TEU enumerates the general aims of the Union's cooperation in the fields of international relations. According to this provision, the Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to, *inter alia*, 'safeguard its values, fundamental interests, security, independence and integrity (21 (2)(a) TEU), consolidate and support democracy, the rule of law, human rights (emphasis added) and the principles of international law' (21 (2)(b) TEU) and 'preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders' (21 (2)(c) TEU). According to art 21 (3) of the TEU the principles and objectives mentioned above, including human rights, must be respected and pursued by the EU in the development and implementation of: 'the different areas of the Union's external action' covered by this Title (General provisions on the Union's external action and specific provisions on the Common Foreign and Security Policy) and by Part Five of the Treaty on the Functioning of the European Union (The Union's external action) the external aspects of its other policies.'

B. EU Guidelines on Human Rights

The general commitment of the EU to the cause of human rights is specified in a series of Human Rights Guidelines adopted by the Council. To date, 11 thematic guidelines have been adopted.³¹ They can be seen as a list of the EU's top priorities in the field of human rights. The operational guidelines provide for specific actions to be taken by the EU in relation to the issue in question. These actions include political dialogue, démarches, monitoring and reporting.

C. EU Strategic Framework and Action Plan on Human Rights and Democracy³²

In 2012 the Council of the European Union adopted the EU Strategic Framework and Action Plan on Human Rights and Democracy.³³ These two documents 'set out the EU's vision for its global human rights policy in the years ahead and establish a detailed list of actions that the EU will implement in order to promote these goals in practice'³⁴ and therefore are essential for establishing the place of human rights in the EU's external relations.³⁵ Among others document states that the EU will work in partnership with regional and other organisations such as the African Union with a view to encouraging the consolidation of regional human rights mechanisms.

The EU Strategic Framework on Human Rights and Democracy sets out principles and defines the EU's objectives and priorities in the field of human rights. The Strategic Framework states that '[t]he European Union is founded on a shared determination to promote peace and stability and to build a world founded on respect for human rights, democracy and the rule of law. These principles underpin all aspects of the internal and external policies of the European Union'. The document also reaffirms the commitment to the promotion and protection of all human rights (civil and political, or economic, social and cultural).³⁶

The idea of human rights permeating all areas of the EU's actions was further specified in the context of external relations by the Strategic Framework, which states that the EU will promote human rights in all areas of its external actions (including trade, investment, technology, internet, energy etc.) and will place human rights at the centre of its relations with all third countries, including its strategic partners.

The Action Plan on Human Rights and Democracy was adopted for the purpose of implementing the Strategic Framework. It builds on 'the existing body of EU policy on human rights and democracy in

³¹ See discussion below.

³² For an extensive analysis of priorities identified by the Strategic Framework/Action Plan, see: Cristina Churrua Muguruza, Felipe Gómez Isa, Daniel García San José, Pablo Antonio Fernández Sánchez, Carmen Márquez Carrasco, Ester Muñoz Nogal, María Nagore Casas and Alexandra Timmer, 'Report mapping legal and policy instruments of the EU for human rights and democracy support', FRAME Deliverable 12.1, < <http://www.fp7-frame.eu/wp-content/materiale/reports/05-Deliverable-12.1.pdf>>.

³³ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy', Doc No 11855/12, 25 June 2012.

³⁴ EU Annual Report on Human Rights and Democracy in the World in 2012 (Thematic Reports), Doc No 9431/13, 13 May 2013, 9.

³⁵ EU Annual Report on Human Rights and Democracy in the World in 2013, Doc No 11107/14, 23 June 2014, 13.

³⁶ In this regard, the Strategic Framework specifically refers to the Joint Communication to the European Parliament and the Council Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach, 12 December 2011, COM(2011) 886 final, available at <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>>.

external action, notably EU guidelines, toolkits and other agreed positions and the various financial instruments, in particular the European Instrument for Democracy and Human Rights'.³⁷

D. Multilateralism³⁸

Having itself been called the 'world's most successful case of multilateralism',³⁹ the EU has embraced the concept of multilateralism from the very beginning.⁴⁰ Nevertheless, it was only in 2003, that 'effective multilateralism' was for the first time recognized as one of the fundamental principles of EU external action. The 2003 European Security Strategy (ESS) recognized that '[i]n a world of global threats, global markets and global media, our security and prosperity increasingly depend on an effective multilateral system' and it committed the EU to the 'development of a stronger international society, well functioning international institutions and a rule-based international order'.⁴¹ It also explicitly recognized the 'important contribution' of the AU 'to a more orderly world'.⁴² The 2008 Report on the implementation of the ESS not only reaffirmed the Union's commitment to effective multilateralism in its external action but also expressed the leadership ambitions of the EU, stating that 'Europe must lead a renewal of the multilateral order'.⁴³

It was through the Treaty of Lisbon that this policy commitment was enshrined in EU primary law and thus considerably strengthened. Article 21 (1) TEU provides that the EU is obliged to pursue multilateral solutions in its relations with the wider world. In particular it is to 'develop relations and build partnerships with [...] international, regional or global organisations', as long as they share certain principles, including human rights, democracy and the rule of law. It shall 'promote an international system based on stronger multilateral cooperation and good global governance' (Article 21 (2) (h) TEU).

Despite the widespread use of the concept of 'effective multilateralism' throughout EU policy documents, its exact scope and content have remained vague and attracted considerable scholarly attention.⁴⁴ In general the EU appears to pursue a three-fold interest through its engagement with other multilateral actors:

1. Ensure that multilateral targets and instruments have the impact they deserve;
2. Achieve greater efficiency and impact through cooperation;
3. Promote EU values and interests effectively.⁴⁵

³⁷Unlike the Strategic Framework, the Action Plan has a deadline: it covers the period until 31 December 2014.

³⁸This section is based on the more detailed analysis in FRAME, 'Report on the analysis and critical assessment of EU engagement in UN bodies', Deliverable 5.1, November 2014, ch II.A.

³⁹Katie Verlin Laatikainen and Karen E. Smith, *The European Union at the United Nations: Intersecting Multilateralisms* (Palgrave Macmillan 2006) 2.

⁴⁰Jan Wouters, Sijbren de Jong and Philip De Man, 'The EU's Commitment to Effective Multilateralism in the Field of Security: Theory and Practice' (2010) 29 Yearbook of European Law 164, 170.

⁴¹European Council, European Security Strategy: A Secure Europe in a Better World, 12 December 2003.

⁴²*ibid.*

⁴³European Council 'Report on the Implementation of the European Security Strategy – Providing Security in a Changing World', Doc No S407/08, 11 December 2008.

⁴⁴See FRAME, 'Report on the analysis and critical assessment of EU engagement in UN bodies', Deliverable 5.1, November 2014, footnote 61 for references.

⁴⁵Based on Commission, 'The European Union and the United Nations: The choice of multilateralism' (Communication) COM(2003) 526 final.

This approach is reflected for example in the 2012 EU Strategic Framework and the Action Plan on Human Rights and Democracy. The Strategic Framework provides that the Union ‘will work in partnership with regional and other organisations such as the African Union [...] with a view to encouraging the consolidation of regional human rights mechanisms’.⁴⁶ In the same vein the Action Plan commits the European External Action Service (EEAS) and the EU Member States to ‘intensify dialogue with other regional organisations and support and engage with emerging regional organisations and mechanisms for the promotion of universal human rights standards’.⁴⁷ More specifically the Action Plan also contains obligations for the EU institutions and Member States to promote the ratification and implementation of regional human rights instruments (action no 4 (a)) and to ‘promote improved access by human rights defenders to the UN and regional human rights protection mechanisms, and address the issue of reprisals against defenders engaging with those mechanisms’ (action no 18 (b)).

Furthermore, most EU Human Rights Guidelines contain references to regional multilateral organisations in line with the abovementioned goals. They commit the EU *inter alia* to raise certain human rights issues in the political dialogues with regional organisations,⁴⁸ to contribute to the strengthening and implementation of existing regional safeguards on the respective human rights issues,⁴⁹ to monitor and encourage regional multilateral organisations⁵⁰ and to cooperate with them more generally.⁵¹

⁴⁶Council of the European Union (n 33).

⁴⁷*ibid*, action no 36.

⁴⁸ EU Human Rights Guidelines on torture, children and armed conflict, LGBTI rights, violence against women, HRDs, freedom of Religion and children’s rights.

⁴⁹ EU Human Rights Guidelines on torture, death penalty, freedom of opinion and expression, violence against women, HRDs and children’s rights.

⁵⁰ EU Human Rights Guidelines on death penalty.

⁵¹ EU Human Rights Guidelines on freedom of religion and on compliance with IHL.

III. Human rights institutional framework of African international organisations and the EU

A. AU and other African international organisations

Promotion and protection of human rights ‘in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments’ is one of the objectives of the AU.⁵² The AU in 2002 replaced the Organisation of African Unity (OAU) which was the first regional inter-governmental organisation in Africa, established in 1963. Promotion and protection of human rights are also set out as principles that member states should adhere to in the treaties establishing Common Market for Eastern and Southern Africa (COMESA),⁵³ East African Community (EAC),⁵⁴ Economic Community of West African States (ECOWAS),⁵⁵ Intergovernmental Authority on Development (IGAD)⁵⁶ and Southern African Development Community (SADC).⁵⁷

The main regional human rights treaty is the **African Charter on Human and Peoples’ Rights** (African Charter) adopted in 1981 which entered into force in 1986. All the 54 members of the AU have ratified the African Charter except South Sudan. The substantive provisions of the Charter are complemented by the Protocol on the Rights of Women in Africa which was adopted in 2003 and entered into force in 2005. The OAU/AU has adopted numerous other treaties setting out human rights norms such as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Refugee Convention (1969)), the African Charter on the Rights and Welfare of the Child (African Children’s Charter (1990)), the African Youth Charter (2006), the African Charter on Democracy, Elections and Governance (2007) and the AU Convention for the Protection and Assistance of Internally Displaced Persons (2009). The AU has also adopted other important normative instruments in the form of non-binding declarations such as the Declaration on Unconstitutional Changes of Government (2000) and the Solemn Declaration on Gender Equality in Africa (2004). The OAU Assembly of Heads of State and Government in 2001 adopted the New Partnership for Africa’s Development (NEPAD) as the development agenda for the continent.

Regional Economic Communities (RECs) have also adopted important normative instruments such as the ECOWAS Protocol on Democracy and Good Governance (2001) and the SADC Social Charter (2003) and the SADC Protocol on Gender and Development (2008).

The main regional institutions for promotion and protection of human rights are the African Commission on Human and Peoples’ Rights (African Commission), the African Court on Human and Peoples’ Rights (African Court) and the African Committee on the Rights and Welfare of the Child (African Children’s Committee). Other institutions with a human rights mandate include the **African Peer Review Mechanism (APRM)**, a voluntary process which states can sign up to in order to be reviewed by an independent panel of African experts and adopt an action plan to improve governance.

⁵²African Union Constitutive Act art 3(h).

⁵³Treaty Establishing the Common Market for Eastern and Southern Africa (COMESA), 1993, art 6(e).

⁵⁴East African Community Treaty, 1999, art 6(d), 7(2).

⁵⁵The Treaty of the Economic Community of West African States, 1993, art 4(g).

⁵⁶Agreement Establishing the Intergovernmental Authority on Development, 1996, art 6A(f).

⁵⁷Treaty of the Southern African Development Community, 1992, art 4(c).

The **African Commission**, an 11-member expert body, was established in 1987 and has a mandate to promote human rights across the continent through providing guidance to states on implementing the African Charter and other regional human rights instruments. Under the African Charter states should regularly report to the Commission on the implementation of the Charter. After a public dialogue the Commission adopts concluding observations. The Commission also provides guidance in the form of resolutions, guidelines and general comments on provisions of the Charter and the Women's Protocol. The Commission also considers individual and inter-state complaints regarding alleged violations of the Charter. The African Children's Committee has a similar mandate in relation to the African Children's Charter.

The **African Court** was established following the entry into force in 2004 of the Protocol to the African Charter Establishing the African Court on Human and Peoples' Rights, adopted in 1998. The African Court complements the protective mandate of the African Commission (consideration of petitions). Only 24 of the AU member states have ratified the Protocol.⁵⁸ Individuals and non-governmental organisations (NGOs) in seven member states can access the Court directly after exhaustion of local remedies since these states have made a declaration allowing direct access.⁵⁹ Cases against other states which have ratified the Protocol must be referred to the Court by the Commission.⁶⁰

The Court which currently only has human rights jurisdiction will change with the entry into force of the Protocol on the Statute of the African Court of Justice and Human Rights which was adopted in 2008 but has not yet received the 15 ratifications required to entry into force. This Protocol will establish a general affairs section and a human rights section of the new Court. In 2014 the AU Assembly adopted a Protocol establishing a third chamber with criminal jurisdiction of the new court.⁶¹ When this new Protocol enters into force the Court will have jurisdiction to try individuals for international crimes as defined in the Protocol.

The African Court is not the only supranational court with a human rights mandate on the African continent. The **ECOWAS Community Court of Justice** has an explicit mandate to hear human rights cases, while the **East African Court of Justice** has heard cases dealing with human rights under the obligation to respect the rule of law as provided in the EAC Treaty. SADC had a Tribunal with limited human rights jurisdiction. However, this court was dismantled following a judgment which outraged Zimbabwe.⁶²

The highest decision making body of the AU is the **Assembly of Heads of State and Government** which meets twice a year for the AU Summit. The **Executive Council**, made up of ministers of foreign affairs or other designated ministers, meets the day before the Assembly to consider issues referred to the Assembly and to 'monitor the implementation of policies formulated by the Assembly'.⁶³ The

⁵⁸See <<http://www.achpr.org/instruments/court-establishment/ratification/>>

⁵⁹See art 34(6) of the Protocol. Burkina Faso, Cote d'Ivoire, Ghana, Malawi, Mali, Rwanda and Tanzania have made this declaration.

⁶⁰Protocol establishing the Court art 5.

⁶¹Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014.

⁶²Michelo Hansungule 'The Suspension of the SADC Tribunal' *Strategic Review for Southern Africa*, 35(1) 2013, 135.

⁶³AU Constitutive Act (n 52) art 13(2).

Permanent Representatives' Committee, composed of the ambassadors to the AU, prepares the work of the Executive Council.⁶⁴

The **AU Commission** is the Secretariat of the Union which is based in Addis Ababa, Ethiopia. The Commission is composed of a chairperson, a deputy chairperson and Commissioners in charge of the following thematic areas:⁶⁵

- Political Affairs
- Social Affairs
- Trade and Industry
- Economic Affairs
- Peace and Security
- Infrastructure and Energy
- Human Resources, Science and Technology
- Rural Economy and Agriculture

Each Commissioner is in charge of a department on the thematic area. With regard to human rights the lead department is the Department of Political Affairs, though the work of the African Children's Committee falls under the umbrella of the Department of Social Affairs.⁶⁶

A **Pan-African Parliament** (PAP) has been established with its seat in Midrand, South Africa. The Parliament was established to 'ensure the full participation of African peoples in the development and integration of the continent'. For now PAP is indirectly elected and serves only in an advisory capacity. Another body created to ensure wide participation in the setting of the agenda of the continental organisation is the Economic, Social and Cultural Council (ECOSOCC) which is composed of CSOs from across the continent and the diaspora.

The **Peace and Security Council** (PSC) was not included among the AU organs in the Constitutive Act but established by the AU through the Protocol on the PSC adopted in 2002. The PSC is composed of 15 AU member states on a rotational basis and meets regularly to assess the peace and security situation across the continent. Its powers include the deployment of peace support missions and the imposition of sanctions as a result of unconstitutional change of government in an AU member state.

The AU has established the **African Governance Architecture** (AGA) to better coordinate the efforts of various organs in implementing the instruments adopted by the AU and RECs in relation to human rights, governance and democracy.⁶⁷ The AGA is an evolving mechanism composed of three cardinal pillars: normative vision, institutions and processes of interactions amongst AU bodies with human

⁶⁴AU Constitutive Act (n 52) art 21.

⁶⁵See <<http://www.au.int/en/commission>>.

⁶⁶The Secretariat of the Committee is based in this department while the Secretariat of the African Commission is located in Banjul, The Gambia, and the African Court in Arusha, Tanzania.

⁶⁷George Mukundi Wachira, 'Consolidating the African Governance Architecture', SAIIA Policy Briefing 96, June 2014.

rights, democracy and governance mandates. However, Tissi and Aggad-Clerx has observed that despite the numerous promises which came with its establishment, the AGA has been riddled with numerous challenges which have constrained its effective operationalisation.⁶⁸ The membership of the AGA framework reflects a wide spectrum of actors with a blend of approaches and competencies to advance continental human rights and governance agenda. Yet, within the AGA the workflows and relationships among these actors are still far from clear.⁶⁹ Further, it is confronted with a shortage of human resource capacity at the AU Commission, an uneven commitment by African leaders and less financial and political support from the donors including the EU.⁷⁰

B. Major EU human rights stakeholders involved directly or indirectly in cooperation with the AU and other African IOs

The following section will map the major stakeholders in the EU which are involved directly or indirectly in theory or practice in the cooperation with the AU and other African IOs.⁷¹

The **European Council** functions as the primary agenda setter and strategic body of the EU. According to Article 26(1) TEU it shall 'identify the Union's strategic interests, determine the objectives [...] and define general guidelines', and thus set the general political directions and priorities of EU foreign policy. So far, the European Council has only rarely addressed human rights issues,⁷² however the Council concludes on ongoing crises in African states.⁷³

The **Council of the European Union** is mandated with policy-making, coordinating and legislative functions.⁷⁴ It meets in 10 different formations, depending on the policy area at hand. The Foreign Affairs Council 'shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent'.⁷⁵ It is instrumental for the adoption of decisions concerning the EU's human rights priorities and strategies in its cooperation with the AU.⁷⁶ Most notably, on 25 June 2012 the Foreign Affairs Council adopted the EU Strategic Framework and Action Plan on Human Rights and Democracy, which provided strategic guidance for the Union's engagement with regional organizations, explicitly referring to the AU.⁷⁷ Furthermore, since 2008, the Foreign Affairs Council has adopted a set of eleven Human Rights Guidelines, which stipulate the Union's priorities and strategies on a variety of human rights issues. The majority of these Guidelines contain explicit guidelines for EU cooperation with regional

⁶⁸Nicola Tissi and Faten Aggad-Clerx, 'The road ahead for the African Governance Architecture: An overview of current challenges and possible solutions' (2014) available at <<http://www.saiia.org.za/occasional-papers/the-road-ahead-for-the-african-governance-architecture-an-overview-of-current-challenges-and-possible-solutions>>.

⁶⁹ Tissi and Aggad-Clerx (n 68) 7.

⁷⁰ Tissi and Aggad-Clerx (n 68) 10.

⁷¹ For more detailed information on the various EU actors discussed in this chapter see FRAME, 'Report on the analysis and critical assessment of EU engagement in UN bodies', Deliverable 5.1, November 2014, ch III.B.

⁷² FRAME, 'Report on the analysis and critical assessment of EU engagement in UN bodies', Deliverable 5.1, November 2014, ch III.B.1.

⁷³ For example on 21 March 2014 the European Council presented Delegations with its Conclusions inter alia on EU-Africa relations. See: Conclusions of 21st March paras. 35-37. <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/141749.pdf>. accessed 15.06.2015

⁷⁴ TEU art 16(1).

⁷⁵ TEU art 16(6).

⁷⁶ See also *infra*, ch IV.A.

⁷⁷ Council of the European Union (n 32).

organizations in general and with the AU in particular.⁷⁸ The Foreign Affairs Council often discusses African issues including terrorism⁷⁹, elections⁸⁰ and epidemics.⁸¹ The Council is supported by a Secretariat, the Permanent Representatives Committee ('COREPER'), the Political and Security Committee ('PSC') and more than 150 specialised committees and working parties.

COREPER is tasked with 'preparing the work of the Council', 'carrying out the tasks assigned to it by the latter'⁸² and 'ensur[ing] consistency of the European Union's policies and actions'.⁸³ In its COREPER II formation (comprising the Permanent Representatives of the EU Member States) it is responsible for examining all draft proposals before placing them on the agenda of the Council.

The **Political and Security Committee** is a permanent Council committee whose mandate includes monitoring the international situation within the area of the CFSP, contributing to policy making by delivering opinions to the Foreign Affairs Council, and monitoring the implementation of agreed policies.⁸⁴ It plays an important role in the policy development process of the EU as it discusses and endorses at ambassadorial level proposals originating from the working groups before forwarding them to the COREPER.

The **Council Working Party on Human Rights** (COHOM) is a key actor in defining the EU's human rights policy. It drafts EU strategic human rights documents and ensures outreach to internal and external stakeholders during the preparatory stages. As such it was for example responsible for drafting the EU Strategic Framework and Action Plan and most of the Union's human rights guidelines.⁸⁵ In addition to thematic working parties the Council also has geographic working parties. The **Council Africa Working Party** (COAFR) is responsible for the management of EU external policy towards sub-Saharan Africa, including its 46 countries, the AU and other sub-regional organizations.

The EU **High Representative for Foreign Affairs and Security Policy/Vice President of the Commission** (HR/VP) conducts and contributes to the development of the Union's CFSP.⁸⁶ She chairs the Foreign Affairs Council,⁸⁷ represents the Union externally for matters relating to the CFSP,⁸⁸ and organises the coordination of EU Member States' positions in international organisations and conferences.⁸⁹ The HR/VP meets with the representatives of African states and delivers statements relating to African

⁷⁸ See *infra*, ch IV.A.

⁷⁹ Council conclusions on the Boko Haram threat, 09/02/2015 Press release 44/15, Foreign affairs & international relations, <<http://www.consilium.europa.eu/en/press/press-releases/2015/02/150209-council-conclusions-boko-haram-threat/>>. accessed 15.06.2015.

⁸⁰ Council conclusions on elections in Nigeria, 09/02/2015 Press release 46/15, Foreign affairs & international relations, <<http://www.consilium.europa.eu/en/press/press-releases/2015/02/150209-council-conclusions-elections-nigeria/>>. accessed 15.06.2015.

⁸¹ Council conclusions on Ebola, 16/03/2015 Press release 121/15 Foreign affairs & international relations <<http://www.consilium.europa.eu/en/press/press-releases/2015/03/16-council-conclusions-ebola/>>. accessed 15.06.2015

⁸² TFEU art 240(1).

⁸³ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure [2009] OJ L325/35, art 19(1).

⁸⁴ TEU art 38.

⁸⁵ Note for example that the EU Guidelines on promoting compliance with International Humanitarian Law (IHL) were update by the Council Working Party on Public International Law (COJUR).

⁸⁶ TEU art 18(2).

⁸⁷ TEU art 18(3), 27(1).

⁸⁸ TEU art 15(6), 27(2).

⁸⁹ TEU art 34(1).

matters. For example the HR/VP gave statements on the situation in Côte d'Ivoire⁹⁰ and on arbitrary arrests in Sudan.⁹¹

The **European External Action Service (EEAS)** is responsible for supporting the HR/VP in fulfilling her mandate,⁹² and for assisting 'the President of the European Council, the President of the Commission, and the Commission in the exercise of their respective functions in the area of external relations'.⁹³ At **headquarters** level, the Directorate for Human Rights and Democracy is tasked with mainstreaming human rights in the work of the EEAS. In addition, the Directorates for Africa and for North Africa, Middle East, Arabian Peninsula, Iran & Iraq are responsible for the EU's relations with the African continent. On the ground it is the **EU Delegation to the African Union** created in December 2007, which represents the Union vis-à-vis the AU.⁹⁴ Located in Addis Ababa, the Delegation deals with CFSP/CSDP and Union policy areas in the context of the Africa-EU strategic partnership mainly through dialogue on political issues of mutual concern and longer term cooperation and institution building.⁹⁵ The Delegation coordinates several projects of pan-African nature among which primarily the **African Union Support Programme (AUSP)**.⁹⁶

The **EU Special Representative for Human Rights (EUSR)** has been appointed on 25 July 2012 in order to contribute to enhancing the visibility and effectiveness of the Union's human rights policy.⁹⁷ His tasks include improving the coherence and mainstreaming of human rights in EU external action, as well as 'enhanc[ing] dialogue with governments in third countries and international and regional organisations on human rights'.⁹⁸ In line with his mandate, he has repeatedly met with AU representatives or participated in AU events.⁹⁹ The Council has appointed two other EUSR dealing with

⁹⁰ Statement by EU High Representative Catherine Ashton on Côte d'Ivoire of 3 March 2011, A 089/11 <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/119597.pdf>.

⁹¹ Statement by the spokesperson of EU High Representative Catherine Ashton on Arbitrary Arrests in Sudan of 21 May 2011, A 195/11 <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/122139.pdf>. accessed 15.06.2015.

⁹² TEU art 27(3); Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service [2010] OJ L201/30, art 2(1).

⁹³ *ibid* art 2(2).

⁹⁴ See also TEU art 221(1) which provides that 'Union delegations in third countries and at international organisations shall represent the Union'.

⁹⁵ Delegation of the European Union to the African Union, The Role of the EU Delegation, <http://eeas.europa.eu/delegations/african_union/about_us/delegation_role/index_en.htm>. accessed 15.06.2015

⁹⁶ Discussed in detail below in the section on financing.

⁹⁷ Council Decision 2012/440/CFSP of 25 July 2012 appointing the European Union Special Representative for Human Rights [2012] OJ L200/21; his mandate has been most recently renewed through Council Decision (CFSP) 2015/260 of 17 February 2015 extending the mandate of the European Union Special Representative for Human Rights [2015] OJ L43/29. For more information on the EUSR see also DominikTolksdorf, 'EU Special Representatives: An Intergovernmental Tool in the Post-Lisbon Foreign Policy System?' (2013) 10 European Foreign Affairs Review 471; Jan Wouters, Laura Beke, Anna-Luise Chané, David D'Hollander and Kolja Raube, 'A comparative study of the EU and US approaches to human rights in external relations' (n 20) 65 et seq.

⁹⁸ Council Decision 2012/440/CFSP (n 93) art 3(c).

⁹⁹ See for example the meeting of the EUSR with the Commissioner for Political Affairs of the African Union Commission in December 2014, 'African Union and European Union to promote the UN Guiding Principles on Business and Human Rights', 3 December 2014, <http://eeas.europa.eu/delegations/un_geneva/press_corner/all_news/news/2014/20141203_au_eu_bussiness_human_rights_en.htm>. accessed 15.06.2015.

African issues: the **EUSR for the Horn of Africa**¹⁰⁰ and the **EUSR for the Sahel**¹⁰¹ whose mandates are based on active contribution to ‘regional and international efforts to achieve lasting peace, security and development’¹⁰² in given regions. From 2007 to 2014 the EU had a SR for the AU who currently remains head of the EU Delegation to the AU. His mandate was based on the EU’s ‘comprehensive policy objectives in support of African efforts to build a peaceful, democratic and prosperous future as set out in the Joint Africa-EU Strategy’.¹⁰³

As the Union’s executive body, the **European Commission** ensures and oversees the application of EU primary and secondary law.¹⁰⁴ It actively engages in mainstreaming human rights across all policy areas¹⁰⁵ and represents the Union externally in all areas that do not fall under the CFSP.¹⁰⁶ The AU Commission and the EC meet in **College-to-College sessions**.

The **European Parliament** is considered to play ‘a leading role in the promotion of human rights, in particular through its resolutions’.¹⁰⁷ As the Council has stated in the Strategic Framework, the European Parliament’s ‘democratic mandate gives it particular authority and expertise in the field of human rights’. It has repeatedly adopted resolutions dealing with the human rights situation in Africa¹⁰⁸ sometimes referring to the African Charter on Human and Peoples’ Rights.¹⁰⁹ In addition, the Parliament’s **Subcommittee on Human Rights** (DROI) has on several occasions discussed issues of relevance for the AU. It conducted studies,¹¹⁰ workshops¹¹¹ and study visits. Members of DROI visited AU Commission premises in Addis Ababa on 15-17 July 2013.

Additionally the **EU Member States** often create specialized cells within the structure of their Ministries of Foreign Affairs for cooperation with African states and IOs.¹¹²

¹⁰⁰ Council Decision CFSP 2015/440 of 16 March 2015 extending the mandate of the European Union Special Representative for the Horn of Africa.

¹⁰¹ Council Decision 2013/133/CFSP of 18 March 2013 appointing the European Union Special Representative for the Sahel.

¹⁰² Council Decision 2011/819/CFSP of 8 December 2011 appointing the European Union Special Representative for the Horn of Africa (2011) OJ L 327/62, art 2(1); Council Decision 2014/130/CFSP of 10 March 2014 extending the mandate of the European Union Special Representative for the Sahel (2014) OJ L 71/14, art 2(1).

¹⁰³ Council Decision 2012/390/CFSP of 16 July 2012 extending the mandate of the European Union Special Representative to the African Union (2012) OJ L 187/44, art 2.

¹⁰⁴ TEU art 17(1), 27(2).

¹⁰⁵ For a detailed analysis of the human rights policy of the various Commission DGs, see Frame Report D4.2, ‘Report global human rights protection governance system’ (forthcoming July 2015).

¹⁰⁶ TEU art 17(1).

¹⁰⁷ Council of the European Union, ‘EU Strategic Framework and Action Plan on Human Rights and Democracy’, Doc No 11855/12, 25 June 2012, 9.

¹⁰⁸ For example: European Parliament resolution of 18 September 2014 on the situation in Libya (2014/2844(RSP)).

¹⁰⁹ For example: European Parliament resolution of 18 September 2014 on Burundi, in particular the case of Pierre Claver Mbonimpa (2014/2833(RSP)).

¹¹⁰ For example: Study on Human rights protection mechanisms in Africa: Strong potential, weak capacity, EP Policy Department briefing.

¹¹¹ For example: Workshop of 20 June 2011 on the role of women in the democratization process in North Africa and the Middle East (FEMM, AFET, DEVE, DROI).

¹¹² For example: Department of Africa and the Middle East of Polish Ministry of Foreign Affairs <http://www.ms.gov.pl/en/ministry/organisation/organisational_units/_department_of_africa_and_the_middle_east_>.

IV. Substantive goals and objectives

A. EU human rights policy

This section assesses the aims and objectives of the EU's human rights policy in relation to Africa and also gives a brief overview of the EU's strategy development process.

In 2005 the European Commission adopted the **EU Strategy for Africa**. This Strategy considers 'international law and human rights, equality and mutual accountability' as the 'core principles' upon which its partnership with Africa is predicated.¹¹³

The Strategy operates on the basis of ownership and responsibility, including working through African institutions. According to the EU Strategy for Africa

the primary responsibility for building democracy lies in the hands of Africa's people and of its ruling class [...] democracy cannot be created or imposed by [...] external actors [...] the appropriate role of external actors is therefore instead to support and encourage domestic efforts to build, strengthen and sustain democratic norms, procedures and institutions.¹¹⁴

The Strategy affirms that the partnership between the EU and Africa must be based on respect for human rights and fundamental freedoms.¹¹⁵ It lists the reinforcement of human rights and democracy as one of the areas of action, while putting particular emphasis on children's and women's rights and gender equality.¹¹⁶

Similarly, the EU's 2012 Strategic Framework and Action Plan on Human Rights and Democracy includes the AU as one of those regional organisations with which the EU seeks to 'work in partnership' and 'intensify dialogue [...] for the promotion of universal human rights standards'.¹¹⁷

Apart from this general commitment to human rights promotion and protection, the EU has adopted additional policy documents which specify its concrete goals and objectives with regard to its human rights cooperation with the AU. Among these are the EU's Human Rights Guidelines as well as a number of agreements, strategies and Action Plans adopted by the EU or jointly by the EU and the AU.

1. EU Human Rights Guidelines¹¹⁸

Since 2008, the EU has adopted a set of eleven Guidelines, addressing children's rights (2008) and children in armed conflict (2008), human rights defenders (2008), violence against women and girls and discrimination against them (2008), human rights dialogues (2009), compliance with international

¹¹³ See 'EU Strategy for Africa', available at http://europa.eu/legislation_summaries/development/african_caribbean_pacific_states/r12540_en.htm.

¹¹⁴ See Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, EU Strategy for Africa – Towards a Euro-African pact to accelerate Africa's development, COM(2005) 489 final, 12 October 2005, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52005DC0489>.

¹¹⁵ *ibid*, 19.

¹¹⁶ *ibid*, 25.

¹¹⁷ Council of the European Union, 'EU Strategic Framework and Action Plan on Human Rights and Democracy', Doc No 11855/12, 25 June 2012.

¹¹⁸ This section corresponds to Filip Balcerzak, Anna-Luise Chané, Chiara Marinelli, Amilcar Romero, Elizabeth Salmón, 'Report on the EU's engagement with regional multilateral organisations – Case study: Inter-American perspective', FRAME Deliverable 5.6, forthcoming, ch IV.

humanitarian law (2009), torture and other cruel, inhuman or degrading treatment or punishment (2012), the issue of the death penalty (2013), freedom of religion or belief (2013), Lesbian, gay, bisexual, transgender and intersex (LGBTI) rights (2013) and most recently freedom of expression online and offline (2014). The majority of these guidelines contain explicit priorities for EU cooperation with regional organisations in general or with the AU in particular.

This engagement takes a number of forms. Most prominent is the commitment of the EU to raise particular human rights issues in the political dialogues with regional organisations.¹¹⁹ The EU Guidelines on Torture, for example, provide that the ‘human rights component of the political dialogue between the EU and [...] regional organisations shall include the issue of torture and other ill-treatment’. Similar provisions can be found in the EU Human Rights Guidelines on children’s rights, children and armed conflict, LGBTI rights, violence against women, human rights defenders (HRDs) and freedom of religion or belief.

Secondly, most guidelines commit the EU to contribute to the strengthening and implementation of existing regional safeguards on the abovementioned human rights issues, and to promote the creation of those safeguards wherever they do not yet exist. Respective provisions can be found in the EU Human Rights Guidelines on torture, death penalty, freedom of opinion and expression, violence against women, HRDs and children’s rights.¹²⁰ A number of human rights guidelines explicitly refer to AU instruments and institutions. The Guidelines on Freedom of Expression for example commit the EU to ‘encourage partner countries to ratify and implement relevant [...] regional human rights instruments’ and to cooperate closely with special rapporteurs from regional organisations, referring explicitly to Article 9 of the African Charter on Human and Peoples’ Rights and to the Special Rapporteur on Freedom of Expression and Access to Information of the African Commission. The EU Guidelines on Torture commit the EU to ‘urge third countries to [...] accede to [...] relevant regional instruments such as the Robben Island Guidelines on the prevention and prohibition of torture in Africa’.

The guidelines on death penalty equally single out the AU as a partner organisation, stating that the ‘EU monitors closely and encourages measures and initiatives taken by other regional organisations inter alia the African Union [...], who work towards the abolition of the death penalty’. Regional organisations are also considered as a source of information in the guidelines on LGBTI rights and on

¹¹⁹ Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment (2012); EU Guidelines for the Promotion and Protection of the Rights of the Child (2008); EU Guidelines on Children and Armed Conflict (2008); Guidelines to promote and protect the enjoyment of all Human Rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons (2013); EU guidelines on violence against women and girls and combating all forms of discrimination against them (2008); EU Guidelines on the promotion and protection of freedom of religion or belief (2013); all available at <http://eeas.europa.eu/human_rights/guidelines/index_en.htm>.

¹²⁰ Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment (2012); EU Guidelines on Death Penalty (2013); EU Human Rights Guidelines on Freedom of Expression Online and Offline (2014); EU guidelines on violence against women and girls and combating all forms of discrimination against them (2008); European Union Guidelines on Human Rights Defenders (2008); EU Guidelines for the Promotion and Protection of the Rights of the Child (2008); all available at <http://eeas.europa.eu/human_rights/guidelines/index_en.htm>.

children's rights. Finally, guidelines call upon the EU to cooperate with regional organisations to promote certain human rights issues, for example, through joint statements.¹²¹

The strategy development process of EU external human rights activity spans four consecutive stages.¹²² In a first step, COHOM is responsible for drafting the policy document and gathering internal and external input. Internally, COHOM cooperates *inter alia* with other Council working parties, the EEAS, the European Commission, the European Parliament, the Special Representative for Human Rights and with EU delegations. Externally, COHOM reaches out to other international organisations, HRDs and civil society. The draft proposal is then sent to the PSC for discussion and endorsement at ambassadorial level. Subsequently the draft proposal is forwarded to the Permanent Representatives Committee (COREPER II) for inclusion in the agenda of the Foreign Affairs Council (FAC), by which it is finally adopted.

B. Agreements, strategies and action plans

1. Agreements

The establishment of the European Economic Community (EEC) through the entry into force of the Treaty of Rome in 1958 marked the beginning of collective European development policy towards Africa. The Yaoundé Convention was signed in 1963, shortly after the establishment of the OAU,¹²³ by the Community's six founding members and 18 newly independent sub-Saharan African states. The African states were all former colonies or mandate territories of the EEC member states. There was not much engagement of the OAU in the negotiations over Yaoundé I or its successor treaty Yaoundé II signed in 1969. This changed with the negotiations over what became the Lomé Convention which was negotiated between the EC and the ACP states with significant participation of the OAU.¹²⁴ The ACP which was created by the Georgetown Agreement in 1975 seeks to reduce poverty and enhance sustainable development within its member states. The Lomé Convention came into force in April 1976 and was revised four times (Lomé II, 1981; Lomé III, 1985; Lomé IV, 1989, Lomé IV-bis, 1995).¹²⁵

In 2000 the Lomé Convention was replaced by the **Cotonou Partnership Agreement**¹²⁶ which is the largest North-South partnership in the world.¹²⁷ It was signed in 2000 in Cotonou, Benin, between the EU and members of the ACP group of states. With the objective of reducing and eventually eliminating

¹²¹ EU Guidelines on the promotion and protection of freedom of religion or belief (2013); EU Guidelines on promoting compliance with International Humanitarian Law (2009); all available at <http://eeas.europa.eu/human_rights/guidelines/index_en.htm>.

¹²² This paragraph is a brief summary of FRAME, 'Report on the analysis and critical assessment of EU engagement in UN bodies', Deliverable 5.1, November 2014, ch IV.B.

¹²³ Signed on 20 July 1963, it entered into force on 1 June 1964. The six founding members of the EEC were Belgium, France, Italy, Luxembourg, the Netherlands and West Germany). On the other hand, the eighteen African states parties to the Convention were Benin (then Dahomey), Burundi, Burkina Faso (then Upper Volta), Central African Republic, Cameroon, Chad, Congo-Brazzaville, Congo-Kinshasa, *Cote d'Ivoire*, Gabon, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia, Togo.

¹²⁴ Nicholas Hutton 'Africa's changing relationship with the EEC' *World Today*, vol 30, no 10 (October 1974) 426-35.

¹²⁵ For an overview of the Lomé Conventions and how human rights provisions came to be included see Karin Arts, *Integrating human rights in development cooperation: The case of the Lomé Convention* (Kluwer Law International 2000).

¹²⁶ Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, [2000] OJ L317/3.

¹²⁷ European Centre for Development Policy Management 'The EU and Africa – The policy context for development' (2010) 4. See also Europa 'Cotonou agreement' (November 2011) <http://europa.eu/legislation_summaries/development/african_caribbean_pacific_states/r12101_en.htm>.

poverty, the Cotonou Agreement incorporates a political dimension through political dialogue and the promotion of human rights.¹²⁸

The Cotonou Agreement was revised in 2005 and in 2010 to recognise the process of regional and continental integration across the ACP.¹²⁹ Presently all the 79 member states of the ACP except Cuba are signatories to the Cotonou Agreement which is due for revision in 2015.¹³⁰ The African Union, which has 48 of its members from the Sub-Saharan Africa as members of the ACP and signatories to the Cotonou Agreement,¹³¹ is now officially recognised as an actor of cooperation.¹³² In the new article 30, cooperation is focused on developing and strengthening the capacity of regional institutions in order to increase effectiveness and efficiency of regional policies. In line with such changes, in 2005, the AU became eligible for ACP funding from the European Development Fund. Regular political dialogue between the EU and its member states and ACP member states is provided for in the Cotonou Agreement.¹³³

The prominent place human rights occupy, at least theoretically, is evident in article 9 of the Cotonou Agreement which sets out the parties' commitment to human rights and declares that

Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.

The legal obligation of state parties to take measures to promote 'internationally recognised core labour standards' is set out under article 50. Specifically, states are obliged to enhance partnership through exchange of information on work regulation, the drafting of national labour laws, educational and awareness programmes and implementation of domestic legislations.¹³⁴

Article 96 provides for a consultation procedure and appropriate measures to be adopted if a party considers that despite the regular political dialogue under article 8 a party has failed to fulfil an essential element. If no solution can be found 'appropriate measures may be taken'.¹³⁵

2. Joint Africa-EU Strategy

The first Africa-EU summit took place in Cairo in 2000 and culminated at the second summit in 2007 in Lisbon into a reinforcement of the links between the two continents through the **Joint Africa-EU Strategy (JAES)** adopted as a framework for political dialogue between Africa and Europe, based on certain priority areas, including regional integration in Africa and human rights.¹³⁶ It is aimed at "Win-Win" outcomes for the mutual benefits of the parties involved. It is based on the principle of trust, equality and mutual respect. It aims at obliterating the age-long pattern of donor-recipient

¹²⁸Stephen R. Hurt, 'Co-operation and coercion? The Cotonou Agreement between the European Union and ACP states and the end of the Lomé Convention.' *Third World Quarterly* 24.1 (2003) 161-176.

¹²⁹European Centre for Development Policy Management (n 127) 13.

¹³⁰ ACP (29 May 2015) 'African, Caribbean and Pacific States' < www.acp.int/>.

¹³¹ *ibid*.

¹³²Art 6(1) (b) of the Cotonou Agreement.

¹³³Art 8. See European Parliament, Directorate-General for External Policies of the Union, Directorate B, Policy Department, Study, 'Political dialogue on human rights under article 8 of the Cotonou Agreement', EXPO/B/DEVE/2013/31, July 2014.

¹³⁴ See art 50 (2).

¹³⁵Art 96(2)(a).

¹³⁶European Centre for Development Policy Management 'The EU-Africa partnership in historical perspective' (2006) 2.

relationship, to one founded on reciprocal obligations and responsibilities.¹³⁷

JAES is an extension and expansion of the nature and scope of partnership between the AU and the EU provided for in the EU Strategy for Africa. For the first time in the history of interaction between Africa and Europe, a formal partnership framework placed both the AU and the EU on an equal footing and ensured equal participation and representation of the two continents.¹³⁸ JAES operates on the basis that Africans would not be just the “recipients” of pre-packaged assistance from the EU but would be sitting at the negotiation and decision-making table together with the EU.¹³⁹

JAES provides for a common pathway to sustainable development for the two continents. Accordingly, the partners have agreed that ‘democratic governance and human rights are key for sustainable development and for cooperation between the partners, and are an integral part of both the EU and AU’s core values.’¹⁴⁰

The AU is an integral part of the JAES as evidenced by the inclusion of the President of the AU and the Chairperson of the African Union Commission as contributors to the Summit declarations as well as to the road maps. This is in line with the objective of the JAES to treat Africa as one continent.

The objective of JAES is to provide an overarching framework for bilateral partnership between the EU and Africa, to be operationalised through eight thematic partnerships and consecutive action plans (APs):

- (i) peace and security;
- (ii) democratic governance and human rights;
- (iii) trade and regional integration;
- (iv) energy;
- (v) Millennium Development Goals (MDGs);
- (vi) migration, mobility and employment;
- (vii) science, information society and space;
- (viii) climate change

The strategy seeks to bridge the existing donor-recipient gap between the two parties. First, the parties agreed on the need to consolidate and deal with Africa as one, as opposed to earlier disintegration of policy and institutional overlaps. This shortcoming has evidently strained the AU-EU relations. Against this backdrop, the parties, and especially the AU committed itself to facilitate the ongoing institutional transformation process. The second component is the regional integration or the ‘Unity of Africa’, as a fundamental principle underlining JAES. It is, indeed, the first political framework

¹³⁷African Union 'Africa's strategic partnership' 1 <http://www.au.int/en/sites/default/files/Partnerships.pdf> .

¹³⁸See the Joint Africa-EU Strategy, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/97496.pdf .

¹³⁹ibid.

¹⁴⁰Joint Africa EU Strategy Action Plan 2011-2013, available at <http://www.europarl.europa.eu/document/activities/cont/201306/20130610ATT67542/20130610ATT67542EN.pdf> .

that acknowledges the need to strengthen regional and continental integration as well as promotes the AU's 'Pan-African' integration agenda. Third, the strategy stresses the ambition to reinforce the AU-EU engagement through enhanced cooperation and strengthened political engagement at all levels, including the joint support for efficient multilateralism. Finally, it emphasised an obligation on parties to collaborate to ensure coherence and effectiveness of existing instruments, policies and agreements to achieve the objectives of the partnership. This element reiterates the conception that cooperation between the two regions will be premised on equal participation and representation.

These strategic orientations which extend to, and reinforce the Africa-EU political dialogue and engagement are to be implemented through Action Plans (APs) resulting in for example working relations between the European and Pan-African Parliaments, broadening of the scope of the African Peace Facility (APF) and participation of CSOs in the inter-continental dialogue. JAES according to Meyn is ground breaking considering that it hinges on three essential values, namely equal partnership, ownership and joint accountability.¹⁴¹ However, issues such as negotiations on Economic Partnership Agreements (EPAs) illustrate the unequal relationship that exists between the two sides in practice.¹⁴² With some African sub-regional groupings refusing to become parties to EPAs, the EU has allegedly resorted to pressure African states to sign interim EPA with the threat that it would 'reimpose import duties on major categories of' exports from non-LDC African states.¹⁴³

3. Roadmap (2014-2017)

The declaration adopted at the 4th Africa-EU summit in April 2014 in Brussels, reaffirmed the commitment to reinforce respect for human rights, good governance and rule of law. Under the banner of 'Investing in people, prosperity and peace' priority areas were identified, namely: (i) contributing to human security, reducing fragility and foster political stability; (ii) ensure transparent, democratic and accountable governance (iii) promote human capital development; (iv) stimulate economic growth through poverty reduction; and (iv) addressing emerging issues such as resource management, environment and climate change.

The theme of the summit underlined the leaders' intent to shift the focus from donor-recipient relationship and conflict management to economic development and solid business cooperation.¹⁴⁴ This was evinced in the willingness to deepen economic partnership in areas of private-public development in order to provide a meaningful counterbalance to emerging economies such as China and India.

Despite this apparent move away from security issues, the fact that peace and security was progressively the first of the items to be discussed reflects the primary objective of the partnership in terms of priorities. This is not surprising considering that economic development is preconditioned on

¹⁴¹Mareike Meyn, 'An anatomy of the Economic partnership agreements', *The EU and Africa: From Euroafrique to Afro-Europa*, London: Hurst & Company (2012) 197-216.

¹⁴²ibid. See also eg Annika Björklund and Ole Elgström 'The EPA-negotiations: A channel for norm export and import? In Annika Björklund et al (eds) *Importing EU norms – Conceptual framework and empirical findings* Springer, (2015) 133-152.

¹⁴³ Meyn (n 141) 221.

¹⁴⁴ Ville Suutarinen and Alvaro Benlloch Miranda 'EU-Africa relations following The 4th EU-Africa Summit' *Revista Cuadernos Manuel Giménez Abad* 7 (2014) 205-209.

stability and most African-led Peace Support Operations (PSOs) would be gravely constrained without the Peace Facility .¹⁴⁵

4. Action plans

First Action Plan (2008-2010)

The first JAES action plan commenced on 9 December 2007 with a two-year time frame. Under this framework, development of infrastructure was an overarching priority. Democracy, governance and human rights were listed as three of the cross-cutting themes of special importance to the partnership.

The plan led to the launching of the first Africa-EU Partnership on Democratic Governance and Human Rights (PDGHR) Action Plan. Under this initiative, cultural cooperation and sustainable development was also considered as a core EU-AU value. Objectives included to (i) to facilitate discussion at global and international fora; (ii) support the African Charter on Democracy, Elections and Governance; and the African Peer Review Mechanism (APRM); and (iii) increased collaboration in the sector of cultural goods.

Furthermore, in light of the responsibility and political guidance of the existing AU-EU Ministerial Troika, and with inputs from sector-specific ministerial Troikas, the first AP sought to provide institutional architecture and implementation modalities to ensure the implementation of the aforementioned priorities. The Joint EU-AU Task Force was in due course established and mandated to ensure the evaluation of development achieved and provide feedbacks to their relevant regions.

Second Action Plan (2011-2013)

The 3rd Africa-EU Summit meeting in Tripoli in 2010 adopted the second AP (2011-2013). In addition to the eight themes operationalised under the previous AP, cross-cutting issues of coordination, institutional architecture and financing were included in this mechanism.

The text covers in detail the following areas: (i) peace and security; (ii) democratic governance and human rights; (iii) regional economic integration, trade and infrastructure; (iv) MDGs; (v) climate change and environment; (vi) energy; (vii) migration, mobility and employment; and (viii) science, information society and space. In addition to reinforcing these thematic issues, the plan stressed the importance of a more dynamic private sector, and reiterated the bilateral commitment to collaborate with international allies to achieve growth in all sectors of engagement.

The Africa-EU partnership on democratic governance and human rights as set out in the 2011-2014 Action Plan had the following objectives:¹⁴⁶

- To strengthen the open and inclusive Africa-EU dialogue on democratic governance and human rights. This shall also contribute to enhancing the joint influence of Africa and the European Union in international fora and at global level in these fields.
- To contribute to the establishment and strengthening of the African Governance Architecture with coordinated EU support

¹⁴⁵ibid.

¹⁴⁶JAES Action Plan 2011-2013, Partnership on democratic governance and human rights.

- To strengthen the close cooperation between Africa and the EU in the area of cultural goods and other cultural activities
- To strengthen synergies and linkages between human rights and democratic governance in its political, economic and social dimension and other areas of the Africa/EU partnership

The Africa-EU 'Platform for dialogue' on governance and human rights was established in November 2010, days before the third AU-EU summit. The Platform created an open space for key AU-EU stakeholders to engage in all-inclusive discussion towards addressing the overall aim of the PDGHR, specifically on poor governance and rule of law.¹⁴⁷ However, the operationalisation of the platform has been fraught with several controversies ranging from lack of political support from both the AU and EU sides, leading to the double postponement of its sessions.¹⁴⁸

5. Sub-regional cooperation strategies

In addition to the inclusion of the RECs within the framework of JAES, the EU also supports sub-regional initiatives not aligned to the RECs such as the Code of Conduct Concerning the Repression of Piracy, Armed Robbery Against Ships and Illicit Activity in West and Central Africa adopted by the Summit of Gulf of Guinea Heads of State in 2013.¹⁴⁹

The EU Strategy for Security and Development in the Sahel notes that the

EU will need to promote and encourage actively African responsibility and ownership, particularly of the African Union (AU) and the Economic Community of West African States (ECOWAS) to demonstrate focus, urgency, pragmatism and political engagement, along with flexibility and a requirement to coordinate with other players, such as the Arab League and the Arab Maghreb Union (AMU) ...¹⁵⁰

The strategy is not the result of collaboration between the institution and it is noticeable that CEN-SAD, which is the REC covering the whole Sahel area is not even mentioned in the Strategy.¹⁵¹ In contrast support for the CEN-SAD Secretariat is set out as one of the objectives of the EU support for the Great Green Wall for the Sahara and the Sahel Initiative in 2011.¹⁵²

6. EU member state initiatives

In addition to the EU-AU partnership and support, different members of the EU have different initiatives targeting the AU human rights and governance activities. For instance, Sweden, through SIDA, has a strategy for support for regional and sub-regional development cooperation in sub-Saharan Africa.¹⁵³ One of the objectives of this strategy is 'supporting networks and regional institutions for exchange of knowledge and joint policy development in healthcare, education and

¹⁴⁷Open Society Foundation (2010) 'EU-AU relations', available at <http://www.opensocietyfoundations.org/sites/default/files/eu-au-relations-20100708.pdf>.

¹⁴⁸ Interview with AU official, May 2015.

¹⁴⁹ Council of the European Union, EU strategy on the Gulf of Guinea, Foreign Affairs Council meeting, Brussels, 17 March 2014.

¹⁵⁰ European Union External Action Service 'Strategy for Security and Development in the Sahel', policy brief No 4, http://eeas.europa.eu/africa/docs/sahel_strategy_en.pdf.

¹⁵¹ African Governance Institute 'Note on the European Union Strategy for Security and Development in Sahel' < African Governance Institute>.

¹⁵² <http://eeas.europa.eu/africa/docs/sahel_strategy_en.pdf> 4.

¹⁵³ <http://www.regeringen.se/content/1/c6/03/97/83/5038c3b1.pdf>.

culture, and also in relation to democracy, human rights and gender equality.¹⁵⁴ Through this strategy Sweden supports the AU and its institutions such as NEPAD and other sub-regional bodies 'to promote democracy and human rights.'¹⁵⁵

Denmark and Norway, through Danida and Norad, have not only been active in implementing the JAES, but have been also busy promoting Nordics priorities either through the EU or through framework arrangements with the AU and other pan - African institutions such as NEPAD.¹⁵⁶ The UK, France, Germany, the Netherlands have equally developed pan-African programmes directed at engaging the AU and other pan-African bodies. According to DFID's Africa Regional Programme Operational Plan 2011-2015, for example, the Government of the UK is committed to 'strengthen governance, accountability and conflict prevention through improving election monitoring and feedback of citizens' views on country governance to their policy makers across Africa.'¹⁵⁷

The multiplicities of the initiatives of EU member states targeting the African Union, though commendable, could be problematic. First, this is because of the lack of capacity to effectively implement these initiatives on the part of the AU Commission. Second, in the absence of an overall coordinating mechanism on the side of the EU member states, the chances for duplication of efforts, overlapping of initiatives, waste of scarce resources and minimum impact are high. For instance, the evaluation of the Danida pan-African programme reported lack of donor coordination and clear responsibilities among different actors.¹⁵⁸

C. Conclusions

The joint EU-Africa strategic partnership put African IOs and in particular the AU at the centre of EU engagement with the region. JAES coexists with a number of other initiatives with similar aims, most importantly the Cotonou Agreement. JAES recognises accountability, equal partnership and ownership as the three core values. It further highlights the essence of regionalism in Africa which has evolved as a solution to overcome the setbacks of disintegration in a competitive market. JAES follows in the footsteps of the 2005 EU Strategy for Africa with the EU leading the way for the formulation of principles of the partnership but allowing African institutions taking the lead on implementation.

¹⁵⁴ *ibid.*

¹⁵⁵ Swedish International Development Cooperation Agency 'Swedish Strategy for Support for Regional and Subregional Development Cooperation in Sub-Saharan Africa' (January 1 2002 – December 31 2006) 13(17).

¹⁵⁶ Gorm R Olsen 'Scandinavian Africa policies: value-based foreign policies between British affinity, French national interests and EU norms' in Tony Chafer and Gordon Cumming, eds. *From rivalry to partnership?: new approaches to the challenges of Africa*. Ashgate Publishing, Ltd., (2011) 91.

¹⁵⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67556/afr-reg-1.pdf.

¹⁵⁸ Paul D. Williams 'US-UK cooperation in Africa' in Tony Chafer and Gordon Cumming, eds. *From rivalry to partnership?: new approaches to the challenges of Africa*. Ashgate Publishing, Ltd., (2011) 107-122, 119.

V. Tools/methods employed by the EU at the African IOs

A. Introduction

The two continents have employed different tools to enhance the quality of their interaction. Have these tools delivered on their goals of improving relationship and inter-continental understanding? This section is an attempt to assess the level of commitment to these tools; the quality of these tools; the institutional arrangements underpinning them and the inter-linkages between the different tools and the broader continental interests, goals and focus. This study intends to contribute by specifically evaluating the effectiveness of the cooperation in strengthening and promoting collaboration in the areas of democracy, rule of law and human rights.

The effectiveness of the following AU-EU joint activities will be examined in this section: AU-EU Human Rights Dialogue (the Dialogue), Africa-EU Platform for Dialogue on Governance and Human Rights (the Platform), EU-Africa Summit (the Summit), EU-Africa High Level Policy Dialogue (the Policy Dialogue), Commission-to-Commission meetings (the College), EU member state initiatives and sub-regional political dialogues.

B. Dialogue

i. Human rights dialogue

Human rights dialogues with third countries constitute one of the important pillars of EU external policy. So far, the dialogues are mostly between EU and third countries. The only exception to this is the EU-AU dialogue. The guidelines governing the initiation, operationalization and management of human rights dialogues are the EU guidelines on human rights dialogues with third countries (EU Guidelines). The EU Guidelines have several aims, namely to identify the role human rights instruments play in EU external policy and to ensure coherence, consistency and, where needed, flexibility and pragmatism across human rights dialogues.

The human rights dialogues are supposed to facilitate the process of mainstreaming human rights and democratisation into all aspects of EU external engagement. The objectives of the dialogues are:¹⁵⁹

- ‘(a) Discussing questions of mutual interest and enhancing cooperation on human rights.
- (b) Registering the concern felt by the EU at the human rights situation in the country concerned; information gathering; and endeavouring to improve the human rights situation in that country.’

The issues discussed should be determined on a case by case basis but should include EU priority issues such as

‘signing, ratification and implementation of international human rights instruments, cooperation with international human rights procedures and mechanisms, combating the death penalty, combating torture, combating all forms of discrimination, children's rights, and in particular those of children in armed conflicts, women's rights, freedom of expression, the role of civil society and the protection of human rights defenders, international cooperation in the field of justice, in particular with the

¹⁵⁹EU guidelines on human rights dialogues with third countries para 4.

International Criminal Court, promotion of the processes of democratisation and good governance, the rule of law and the prevention of conflict.’¹⁶⁰

The nature and scope of the EU Guidelines on human rights dialogues speak to the EU’s engagement with specific countries. Their usefulness in assessing the effectiveness of AU-EU dialogues is, perhaps, limited to the general underlying principles governing the dialogues and the issues up for dialogues. It is to be noted that within the framework of the Africa-EU Partnership, the EU has mainstreamed governance and human rights issues and set up dialogues to shape common understanding around human rights and governance issues. However, human rights issues are not so visibly mainstreamed in the political dialogues with sub-regional bodies. This raises questions about consistency and coherence of approach as expected by the guidelines. With respect to human rights themes for discussion during the dialogues, the AU-EU human rights dialogues have discussed identified themes such as children’s rights, gender equality and international justice.

One main concern with the AU-EU dialogues is the lack of regular and comprehensive review of effectiveness. The review undertaken of the different partnerships within the framework of JAES is too general to cover the specificities of the governance and human rights dialogues. Within the framework of human rights dialogues with third countries regular review is recommended, and the COHOM is mandated to carry out such an assessment.¹⁶¹ There is no similar arrangement within the AU-EU Partnership framework and dialogues.

ii. AU-EU human rights dialogue

1. Setting the context

In the Joint Africa EU Strategy, the parties agreed to ‘facilitate an open, intensive and comprehensive dialogue on all aspects and concepts of governance, including human rights.’¹⁶² The reason for the dialogue being that it will help the parties to ‘define the issues at stake, agree on common positions on issues of common concern and jointly undertake specific initiatives and actions.’¹⁶³ The mandate of the various dialogues between the AU and EU that are discussed below is embedded in this paragraph.

2. Human Rights Dialogue

In 2008, the AU and EU started a regular conversation on human rights issues. The purpose was to ‘enable a comprehensive continent to continent dialogue and cooperation on aspects and concepts as ... the protection of human rights and fundamental freedoms for all,’¹⁶⁴ to share information on recent developments on human rights issues in Africa and Europe, to exchange views on sensitive issues of common concern towards achieving a common position and explore possibilities for

¹⁶⁰EU guidelines on human rights dialogues with third countries para 5.

¹⁶¹EU guidelines on human rights dialogues with third countries para 10.

¹⁶²Council of the European Union ‘The Africa-EU Strategic Partnership: A Joint Africa-EU Strategy’ Lisbon, 9 December 2007

¹⁶³*ibid.*

¹⁶⁴See the Africa-EU partnership on democratic governance and human rights, available at <http://ec.europa.eu/development/icenter/repository/EAS2007_action_plan_governance_human_rights_en.pdf>.

addressing some of the issues. One of the principles that guided the dialogue was ‘mutual respect and understanding, the respect of countries identities, and national priorities.’¹⁶⁵

Initially, the Dialogues took place twice a year; but since 2012 the Dialogue has been organised once a year and transformed from a technical meeting to a political one, led by the AU Commissioner on Political Affairs on the one side and the EU Special Representative on Human Rights on the other.¹⁶⁶ The Dialogue constitutes a component of the partnership on democratic governance and human rights.

The Dialogue is conceived to serve as a space for key stakeholders, institutions, governments and civil society on both continents to contribute to the enhancement of democratic governance policies and respect for human rights. Two principles guide the implementation of the Africa-EU Partnership and, by implication, the Dialogue:

- EU - Africa shared responsibility both in the delivery of the expected outcomes, the provision of policy inputs and material resources, including financing.
- Both Africa and the EU will not reduce this partnership to the traditional development-centred, donor-recipient relationship. Implementation must go ‘beyond development’, ‘beyond Africa’, and ‘beyond institutions’.¹⁶⁷

The implementation of the partnership must take cognisance of ‘the different social, economic, political, and cultural contexts surrounding the two continents and, contribute to sensitizing both sides to their multiple challenges, obstacles, priorities and needs.’¹⁶⁸

3. *Assessment of the Human Rights Dialogue*

The parties to JAES have committed themselves to a result-oriented partnership.¹⁶⁹ Bossuyt and Sherriff notes that

‘measuring the performance of the JAES was bound to be a challenging exercise, considering its innovative nature, the diversity of stakeholders’ expectations, attribution problems as well as the lack of a clear and jointly agreed methodology to measure performance.’¹⁷⁰

The same clearly applies to the Dialogue. Nonetheless, an attempt will be made here to evaluate the strategic goal of the Dialogue, the quality of the Dialogue, the underpinning institutional arrangements that should facilitate the implementation of the outcomes of the Dialogue as well as linkages and complementarity of the Dialogue with other related processes.

¹⁶⁵ibid.

¹⁶⁶Interview African Union official, May 2015.

¹⁶⁷EuropeAfrica.net ‘The Joint Strategy’ <<http://europafrica.net/jointstrategy/>>.

¹⁶⁸ibid.

¹⁶⁹ibid.

¹⁷⁰Jean Bossuyt and Andrew Sherriff ‘What next for the Joint Africa-EU strategy? – Perspectives on revitalising an innovative framework’, European Centre for Development Policy Management, Discussion paper No 94, March 2010, 4. See also Europe Africa Policy Research Network ‘Beyond development aid – EU-Africa political dialogue on global issues of common concern’, 2010.

The following indicators will be used to assess how the Dialogue has performed: (1) Openness and inclusiveness of the Dialogue; (2) AU-EU joint positions and influence within the AU, UN and other international fora based on the strategic position of the JAES; and (3) increased synergies and linkages.¹⁷¹

Inclusiveness

One of the key objectives and commitment of the parties to the JAES is to 'facilitate and promote a broad-based and wide-ranging people-centred partnership ... empower non-state actors and create conditions to enable them to play an active role in development, democracy building, conflict prevention and post-conflict reconstruction processes.'¹⁷² This commitment to build a partnership beyond Africa and beyond institutions, a dialogue between the peoples of the two continents is dependent on how open and inclusive the Dialogue is.

Somehow Africa and the EU do not understand inclusiveness to mean the same thing. As a result, the two continents could not, at the initial stages of the Dialogue, agree on the nature, scope and extent of participation of civil society organisations in the Dialogue. These differences between the AU and the EU proved to be an obstacle at the initial stage of operationalizing the Dialogue.¹⁷³ While the AU on its part interpreted civil society to mean only the Economic, Social and Cultural Council (ECOSOC), its official civil society organ, the EU construed civil society actors in broader terms.¹⁷⁴

Even though there is still no specific civil society platform dedicated to engaging with the Dialogue, there is a civil society forum engaging with JAES process and structures. This CSO engagement has a spillover effect on the Dialogue. The first Africa-EU CSO Forum took place in Cairo in 2010 and the second in Brussels in 2013. The CSO Forum made recommendations during its first meeting. In 2011, the parties to JAES during the 8th Dialogue only 'noted the progress made with regard to the implementation of the outcomes of [CSO Forum] previous seminars',¹⁷⁵ without giving details.

Inclusiveness is not just about the participation of CSO, it is also about other important stakeholders such as the private sector and independent players. It was not until the 9th Dialogue that the parties decided to include actors other than state agents directly in the Dialogue. The President of the African Court on Human and Peoples' Rights and the Chairperson of the African Committee of Experts on the Rights and Welfare of the Child were among those invited for this Dialogue.¹⁷⁶ It is also during the 9th Dialogue that concrete evidence of result from the CSO Forum parallel meetings started to be seen. The parties decided to implement a CSO recommendation by organising an experts meeting on implementing UN Security Council Resolution 1325 on Women, Peace and Security.¹⁷⁷

¹⁷¹These indicators are used because they are those provided for within the Africa-EU strategic framework.

¹⁷²Africa-EU Strategic Partnership (n 6).

¹⁷³Lawrence Ancilleri, Elena A. Flouda, Mårten Löfberg, Lude KJiráček, Andrea E. Ostheimer and Fiona Sayan 'Africa-EU Relations: Moving towards a Strengthened Partnership (2014) A Policy Paper from the European Network of Political Foundations' A Policy Paper from the European Network of Political Foundations (ENoP).

¹⁷⁴Open Society Foundation 'EU-AU relations: the partnership on Democratic Governance and Human Rights of the Joint Africa-EU Strategy' Open Society Briefing Paper (2011).

¹⁷⁵See http://eeas.europa.eu/human_rights/dialogues/docs/au/2011_06_au_eu_en.pdf.

¹⁷⁶See Africa-EU Partnership '9th AU-EU Human Rights Dialogue – Addis Ababa, Ethiopia' <<http://www.africa-eu-partnership.org/newsroom/all-news/9th-au-eu-human-rights-dialogue-addis-ababa-ethiopia>>.

¹⁷⁷ See <http://www.africa-eu-partnership.org/newsroom/all-news/9th-au-eu-human-rights-dialogue-addis-ababa-ethiopia>.

In spite of this progress, during the 4th CSO Forum in 2013 CSOs representatives decided to make the demand for a space for civil society participation in the structure and processes of JAES, a standing feature of their recommendations.¹⁷⁸ In addition, the CSOs participants specifically requested two seats for their representatives at the April 2014 AU-EU Summit.¹⁷⁹ However, in the outcome document of April 2014 AU-EU Summit, the Summit simply took 'note of the Africa-EU civil society organisations' forum meeting of October 2013 and of the youth forum of April 2014.'¹⁸⁰ Unlike the previous dialogues, there was no commitment in the 2014 outcome document to attend to CSO concerns and recommendations.

It would seem from the above examples that, so far, civil society participation in the AU-EU Dialogues is peripheral and not embedded in all the stages of the process. There is also no strategy and structure to allow other important actors in governance and human rights to participate meaningfully in the Dialogue. This is certainly contrary to the criteria provided by the European Council to the effect that civil society organisations and other non-state actors are expected to and should participate actively in 'the various phases involved in preparing; following up and assessing the human rights dialogues and consultations.'¹⁸¹ The lack of meaningful participation of civil society organisations, independent stakeholders and the private sector in the Dialogue not only defeats the goal to build a people-to-people partnership, but also negatively affects the broader buy-in and ownership of the Dialogues. Consequently, the Dialogue, as it stands now, is significantly rendered non-inclusive.

Global influence

JAES is predicated on a 'shared vision' and a 'consensus of values, common interests, and common strategic objectives' between Africa and the EU on continental as well as global issues of common interest to the parties to it. The parties want to facilitate a collective voice and unity of action of the two continents on global issues of strategic interests concerning them. To what extent has JAES contributed to help Africa and the EU forge a common position on the global scene on human rights issues?

Assessing the external impact of a country or group of countries in a multi-layered global system of governance and policy making is, by no means, an easy undertaking. Haastrup suggests that one way to do this is to start by contrasting expectations and capabilities of the actor(s) intending to influence.¹⁸² It is also suggested that external influence could be assessed through agency, power, opportunity, presence, and role-playing of the actor(s) and constraints on the global scene.¹⁸³ This study will use these benchmarks to evaluate whether the inter-continental human rights dialogues between Africa and the EU have translated into shared vision and common values on international human rights issues.

¹⁷⁸ See http://www.aprodev.eu/files/Africa_ACP/EU-Africa/background%20cs%20forum-oct2013.pdf.

¹⁷⁹ *ibid.*

¹⁸⁰ See <http://www.nepad.org/nepad/news/3300/fourth-eu-africa-summit-2-3-april-2014-brussels-declaration>.

¹⁸¹ See paragraph 19 of the report on functioning of the human rights dialogues and consultations on human rights with third countries (2007/2001(INI)).

¹⁸² Toni Haastrup, 'EU as Mentor? Promoting regionalism as external relations practice in EU–Africa Relations.' *Journal of European Integration* 35.7 (2013): 785-800.

¹⁸³ Toni Haastrup, 'Regional Leadership: The Role of the EU' *Rapporteur Report*, First Annual Conference, European Commission (2012).

There are some evidence suggesting that the parties seem to believe their partnership is working on the global level.¹⁸⁴ The first time the parties showed interest to work together on common approaches especially in the United Nations' General Assembly and the UN Commission on Human Rights was in the Third Ministerial Troika of December 2004.¹⁸⁵ This commitment led to the creation, in 2007, of an expert AU-EU forum to discuss human rights. In 2008, Ministerial Troika noted the dialogue between the two continents on global human rights issues 'has been strengthened'.¹⁸⁶ The parties believe that their commitment to work together at Rio +20 was a sign that the shared values of the two continents were at work on a common front. According to AU Ambassador Ajay Kumar Bramdeo, speaking about the outcome of Rio+ 20, 'for the outcomes it is also a sign of a very strong relationship that we have in the Africa-EU Partnership, charting our way forward towards our common destiny.'¹⁸⁷

In 2009 the EU prepared a position paper on areas of common interests and possible cooperation at the global level. The AU responded to this position paper in 2010. The harmonised positions of the Africa-EU as outlined in this position paper resulted into areas of global cooperation that were eventually captured in the second Plan of Action. These are: Universal Periodic Review, the rights of vulnerable groups including, children women and people with disability; racial discrimination, racism, xenophobia and hatred.

Independent observers are not optimistic about the extent of the global influence generated by the AU-EU Partnership in general and, by extension, the Dialogue in particular.¹⁸⁸ Such scepticism is not without basis. On international justice, for example, the AU position and that of the EU are divergent with respect to indictments of African heads of state by the ICC.¹⁸⁹ There are other areas of differences, such as civil society participation in political processes, the role of the media in promoting democratic accountability and LGBT rights,¹⁹⁰ and how to prevent the deaths of migrants on their way to Europe and the treatment of African migrants who make it to the EU. Furthermore, a side by side comparison of European Union's Council Conclusions on Post-2015 and the African Union's Common African Position on Post-2015 reveals differences in emphasis.¹⁹¹ For instance, whereas the latter places emphasis on fundamental socioeconomic issues such as shelter, human development and equitable access to water, the latter focuses on access to justice, accountable institutions and sustainable development. However, sometimes open dialogue is held on issues where there is quite divergent

¹⁸⁴Siphamandla Zondi 'Africa-Europe: A relationship in need of a change' in Europe Africa Policy Research Network 'Beyond development aid EU-Africa Political Dialogue on Global Issues of Common Concern' (2010), available at <<http://europafrika.files.wordpress.com/2009/07/beyond-development-aid.pdf>>.

¹⁸⁵Zondi (n 184) 14; See African Union 'Communique: Africa-Europe dialogue third meeting of the Troikas - 4 December 2004 Addis Ababa (Ethiopia)' <http://www.issafrica.org/uploads/TROIKACOMMDEC04.PDF>.

¹⁸⁶Veronika Tywuschik and Andrew Sherriff. 'Beyond Structures? Reflections on the Implementation of the Joint Africa-EU Strategy.' *ECDPM*, February (2009).

¹⁸⁷See <http://www.africa-eu-partnership.org/newsroom/all-news/road-rio20-au-conference-common-african-position-and-cooperation-eu>.

¹⁸⁸Tywuschik and Sherriff (n 186).

¹⁸⁹Open Society Foundation (n 174).

¹⁹⁰*ibid*.

¹⁹¹See Council of the European Union 'Council conclusions on a transformative post-2015 agenda' General Affairs Council meeting, Council Conclusions 16 December 2014 <<http://www.kpsrl.org/browse/browse-item/t/the-overarching-post-2015-agenda-council-conclusions>> and compare with United Nations Economic Commission for Africa 'African Common Position on the post 2015 development agenda' <<http://www.un.org/en/ecosoc/julyhls/pdf13/ECA%20ECOSOC%20presentation-%20African%20Common%20position%20on%20Post%202015.pdf>>.

opinion such as business and human rights.¹⁹² There are also joint initiatives in relation to some controversial issues such as migration through for example the so called Khartoum process.¹⁹³

There are still 'intractable obstacles to substantive cooperation'¹⁹⁴ by Africa and the EU at the global level. These obstacles include disparities in global power dynamics between Africa and the EU which might lead to different levels of engagement and interests at global level. Again development gap, and critically lack of internal coherence and consistency of the EU, its member states and the AU position on concrete issues up for discussion at multi-lateral fora. The second factor for the slow progress at forging global consensus might be as a result of the failure of Africa-EU to unpack 'and openly discuss principles, values and fundamental action points for a more representative international governance system'¹⁹⁵ that other actors could agree to. In addition, it could also be as a result of unrealistic expectations of the parties. In a partnership already struggling with a number of internal conflicting positions, it could have been more reasonable to adopt a more pragmatic approach to international conversations. Such an approach could ensure that the efforts of the Partners are directed at 'minimising the scope of conflict, accepting the inevitability that positions will conflict and mitigating the impact of such conflicts in the longer term interests of the partnership', for instance.¹⁹⁶

It is, therefore, reasonable to say that the partners to AU-EU Partnership and the Dialogue are still in the process of putting their house in order and that they are not yet in a position to exert meaningful joint influence on common global human rights issues. In addition, divergent views on some of the human rights issues might continue to make difficult the process of attaining a common position between these two parties at the global level.

Increased synergies

The Dialogues are meant to improve the situation of human rights on the ground in third countries.¹⁹⁷ The success of the Dialogue, as a political process is, to a large extent, determined by how linked the Dialogue and its outcomes are to other processes and mechanisms designed to promote and protect human rights. Participation of all relevant key stakeholders in the dialogue as well as deliberate institutional design to link the outcomes of the human rights dialogues with national, regional and continental political, governance and human rights processes are crucial to ensure synergy and implementation.

For example, treaty bodies in the two continents, sub-regional courts, in the case of Africa, and civil society organisations are some of the relevant stakeholders whose roles should not be peripheral to the process of the human rights dialogues. To increase synergy, the parallel and *ad hoc* mechanism the Dialogue avails to these actors has implication for enhancing synergy which is crucial to enabling

¹⁹² Africa-EU Partnership 'Africa and EU join efforts to promote Human Rights in Business', (21 October 2014), <<http://www.africa-eu-partnership.org/newsroom/all-news/africa-and-eu-join-efforts-promote-human-rights-business>>.

¹⁹³ European Council on Refugees and Exiles 'Khartoum process: EU and African Union launch initiative against smuggling of migrants', <<http://ecre.org/component/content/article/70-weekly-bulletin-articles/911-khartoum-process-eu-and-african-union-launch-initiative-against-smuggling-of-migrants.html>>.

¹⁹⁴ Mangala (n 3) 87.

¹⁹⁵ See European Centre for Development Policy Management 'Agenda for action: an EARN proposal on the Joint Africa-EU Strategy and the future of Africa-EU relations' (2010) available at <<http://ecdpm.org/wp-content/uploads/2013/10/EARN-Proposal-Joint-Africa-EU-Strategy-Future-Africa-EU-Relations.pdf>>.

¹⁹⁶ Mangala (n 3) 83.

¹⁹⁷ See EU guidelines on human rights dialogues (2010) available at <http://www.consilium.europa.eu/uedocs/cmsUpload/14469EN_HR.pdf>.

the dialogues have an impact on the situation of human rights on the two continents. Synergies are needed not only between the Dialogue and the work of other human rights actors, but also with governance processes and mechanisms on the two continents.

Currently, there is no strong evidence suggesting that a deliberate mechanism for ensuring synergies does exist. The Dialogue takes place mainly between institutional actors. Civil society actors hold a parallel process to influence the Dialogue. There is no clear understanding of how the inputs of non-state actors are incorporated, nor how non-state actors could be involved in implementing the outcomes of the Dialogue. For instance, how the process of Dialogue feeds into similar activities by mechanisms at national, sub-regional and regional levels is not very clear.

iii. Africa-EU Platform for Dialogue on Governance and Human Rights

Dialogue seems to be the most preferred option to establish the ‘Euro-African consensus on values,’¹⁹⁸ establish a ‘people-centred-partnership’¹⁹⁹ and facilitate an African-EU ‘common and coordinated positions’²⁰⁰ on global issues. Thus, one of the key activities within the framework of JAES was the creation of an ‘informal and inclusive’ platform, the Africa-EU Platform for dialogue on governance and human rights, for dialogue on all governance issues of mutual interests.²⁰¹

The objectives of the Platform include ensuring ‘a transparent, democratic and accountable environment in the respect of human rights and the rule of law; contributing to reducing fragility, fostering political stability and effective governance; and enabling sustainable and inclusive development and growth.’²⁰² The Platform would include conversations on cooperation on democratic governance issues; fight against corruption and money laundering; strengthening the role of public sector institutions; monitoring of elections by the AU in African countries; defence of human rights in Africa and Europe; gender equality, the rights of the most vulnerable groups; dialogue between human rights institutions from both continents; active participation of civil society in Africa-EU dialogue and cooperation; supporting the African Governance Architecture; and fight against illicit trafficking of cultural goods.

The operationalization of the Platform is emblematic of the divergences and convergences in values and views between the two continents. To start, EU and Africa had different interpretation and expectations with respect to their common commitment to create a Platform to serve as an open and inclusive forum for discussing all aspects of governance on the two continents and globally. The EU on its part understood the Platform to be an informal and all inclusive event to exchange views, experience and expertise on all aspects of governance and human rights. On the African side, the understanding was that the Platform was a formal, institutionalised and opened only to institutional actors with mandate on governance and human rights.²⁰³

¹⁹⁸ See Council of the European Union (n 162).

¹⁹⁹ Council of the European Union ‘6th African Union-European Union Human Rights Dialogue, Brussels: Joint Communiqué’ (7 may 2010) 6.

²⁰⁰ Council of the European Union (n 191) para 8.

²⁰¹ <http://www.africa-eu-partnership.org/areas-cooperation/democratic-governance-and-human-rights/achievements-and-milestones>.

²⁰² <http://www.africa-eu-partnership.org/areas-cooperation/democracy-good-governance-and-human-rights/background-and-objectives>.

²⁰³ Open Society Foundation (n 174).

In addition, there were also differences relating to the guiding principles of the Platform. The EU wanted the Platform to be guided by the principles of shared responsibility ‘both in the delivery of the expected outcomes, the provision of policy inputs and material resources’; and, second, to be guided by JAES commitments to ensure that the dialogues be ‘beyond development’, ‘beyond Africa’ and ‘beyond institutions.’ The AU insisted that the overall operationalization of the Platform should depend on the consolidation of the AGA, agreed governance arrangement for the Platform and clear mechanism on the format and modalities of the Platform. It further proposed that only institutional actors with governance mandate and link to AGA can participate in the processes and structures of the Platform.²⁰⁴

To resolve these differences, a multi stakeholder workshop was conducted in Addis Ababa, Ethiopia in 2009. The purpose of the Workshop was to ‘refine respective African and EU positions on the content, format and modalities of the Platform.’²⁰⁵ The Workshop agreed that in order for the Platform to add value to the relationship between the two continents, it must:

- Facilitate the generative capacities of the actors on the two continents to function effectively.
- Assist and inform decision making;
- Be a process rather than an event;
- Be integrated with decision making infrastructure on the two continents;
- Have an autonomous and structured funding;
- Be reviewed annually.

The constitutive meeting in Brussels in 2010 built on and expanded on the above Addis *acquis*. It agreed that the Platform should operate on the basis of the following principles: innovation that avoids duplication, confidence building, and gradual development of institutions in phases.²⁰⁶

To oversee the implementation of this consensus, an *ad hoc* structure – the Working Group - was set up to provide an informal space for multi actor dialogue, for a limited time, on specific governance issues, and to elaborate concrete proposals and recommendations for implementation.²⁰⁷ This Working Group constituted the building blocks of the Platform with the two Commissions as guardians of the Dialogues. All actors, including CSOs, participated on equal footing in constituting this Working Group. Focal points from Africa and EU facilitate the setup, coordination and timely production of outcomes. In 2011, Africa and EU agreed on the working methods of the Working Group.

However, even after the two consensus building meetings, at least two issues still remained unresolved. One was the funding model for the work of the Working Group. The debate was whether funding should be directed through the Platform to the Working Group or directly to the Working Group. The second issue was the link between the Platform and AGA. The African side seems to be resisting efforts to link AGA to the work of the Working Group. This raises issues of complementarity

²⁰⁴Mangala (n 3) 81.

²⁰⁵*ibid*.

²⁰⁶<http://europafrica.net/2010/11/12/constitutive-meeting-of-the-africa-eu-platform-for-dialogue-on-governance-issues/>.

²⁰⁷Open Society Foundation (n 174).

and coherence between the Partners. Despite these differences, it is worth noting that the strive to reach consensus indicates the capacity of the Africa-EU partnership to build bridges, but it also demonstrates that there are substantial issues that still hinder common understanding on a number of issues within the two continents and globally.

The lack of reasonable space for non-state actors in the Dialogue alluded to earlier is, to an extent, remedied within the framework of the Platform. The Platform strives to capture the people-centred partnership component of the Africa-EU by including more actors. In the first Plan of Action, three actors were identified for the purpose of the continent-to-continent dialogues: African and EU member states, institutional actors and organs; and decentralised authorities, parliaments and CSOs. Due to divergent views on what constitute CSOs, one of the concerns of the Addis Ababa Multi-Stakeholders Workshop was the ‘legitimacy of the actors to be involved in the platform in order to produce these outcomes.’²⁰⁸

Consequently, CSOs were granted full participation on the Platform on equal footing with others actors and they participated fully in constituting the Working Group. However, there are still challenges with the participation of the CSOs in the Platform. First, while the EU Steering Group for the European CSOs is autonomous with very flexible selection criteria for participation in the dialogue, the African CSO Steering Group is chaired by ECOSSOC and consists of ECOSSOC members, non ECOSSOC members selected through restrictive criteria, and the AUC; so, while the EU CSOs enjoy informal and flexible space, their African counterparts operate within an institutional arrangement. The fact that there is no institutional arrangement on the European CSOs’ part also means that it makes it difficult for their African counterparts to coordinate concerns and positions with them.²⁰⁹

In addition to these procedural challenges, there are some substantive concerns. The question that is being raised is whether participation by non-state actors meaningfully impacts decision making and policy directions of the Platform. This crucial question is difficult to be satisfactorily answered here; what is clear though is that some CSOs actors believe that their consultation, so far, is rather ‘superficial... and [their] contribution not necessarily integrated into policy’.²¹⁰

The platform lacks visibility. However, the Africa-EU partnership web site notes that ‘the Platform has allowed for the formulation of shared governance agendas and recommendations that feed into political processes in areas such as the management of natural resources and freedom of expression.’

iv. EU-Africa Summit

The change in the nature of the Africa-EU dialogue from a technical to a political process meant also that political discussion needed to occur at all levels of the political structures of the Partners. African and European Heads of State and Government meet every three years at Summit level to take decisions concerning relations between the two continents, embedded within the Joint Africa-EU Strategy.²¹¹ The EU-Africa Summit is the highest level of political dialogue between the two continents.

²⁰⁸Mangala (n 3) 84.

²⁰⁹Mangala (n 3) 84.

²¹⁰Mangala (n 3) 85.

²¹¹European Union, General Secretariat of the Council, ‘The Africa-European Union strategic partnership – Meeting current and future challenges together’, (2011) 71.

So far, there have been four summits. The Summit provides strategic direction for the partnership, discusses and explores solutions to common concerns and issues of mutual interests.

In the period between Summits, Ministers of Foreign Affairs meet every six months to carry the political dialogue forward, review the implementation of the Joint Strategy / Action Plans, and provide political guidance, as necessary. In addition, the ministerial meetings are complemented by sector-specific ministerial or senior officials meetings with inputs from the Joint Experts Groups and the Joint Task Force. The first Summit took place in Cairo in 2000 and marked the first time European and African leaders met at continental level to discuss, express and commit to come together and give a new dimension to their partnership.

The second Summit took place in Lisbon in 2007. At that Summit, the two continents agreed to move from donorship to partnership and to build a relationship based on equality. The third Summit took place in Tripoli and the fourth one in Brussels. The Tripoli Summit focused on economic development, peace and security and the attainment of the Millennium Development Goals [MDGs] in Africa by 2015; and resulted into the Tripoli Declaration. The Brussels Summit focused on 'Investing in people, prosperity and peace.'

The Summit is certainly a demonstration of the highest level of commitment to AU-EU Partnership. However, the usefulness of this platform will, to a large extent, depend on how the outcomes of the Summits are translated into actionable plans and implemented by all the structures of JAES. Additionally, the Summit provides opportunities for multiple formal and informal side events. These catalysing effects of the Summit should be utilised to secure popularisation of the outcomes and secure buy in from multiple stakeholders. The status of the decisions of the Summits within regional and continental systems is not very clear. Thus, the extent to which institutions, structures and initiatives in Europe and Africa either feel obliged or empowered to implement these outcome documents is crucial to the usefulness of the Summit. This is even more so in the African case where the status of the implementation of the decisions of the AU Summits is generally low.²¹²

v. EU-Africa High Level Policy Dialogue

Established at the third Africa-EU Summit which took place in Tripoli in 2010, the EU-Africa High Level Policy Dialogue (Policy Dialogue) is a platform created within the partnership on science, technology and innovation to enhance coordination and cooperation. The Policy Dialogue takes place at the level of senior officials from the EU and AU and their member countries' ministries. While not directly related to human rights, there are aspects of the dialogue with human rights relevance. For example, the Bureau of the EU-Africa Policy Dialogue has chosen to focus on food and nutrition security, and sustainable agriculture.²¹³ Considering that the agricultural sector occupies and plays a central role in the economic and social development in Africa, the dialogue holds the potential of contributing to improved food security.²¹⁴

²¹² Madalitso Z. Phiri and Blaise G. Saenda, 'Mobilising Political Will for Article 4(h) Intervention' In Dan Kuwali and Frans Viljoen *Africa and the responsibility to protect : Article 4(h) of the African Union* 288-299.

²¹³ <http://www.ukcds.org.uk/our-work/sustainable-development/eu-africa-hlpd-to-focus-on-food-security-and-nutrition>.

²¹⁴ Considering that food security has been earmarked as one of the five focus areas of the EU-AU development, a case study to this effect has been provided below. The other four focus areas are trade and finance, making migration work for development, addressing climate change, and strengthening the links between security and development. See European

vi. Commission-to-Commission meetings

The African and the European Union Commissions are the main actors and key ‘implementers’ of the Africa-EU Strategic Partnership; therefore, implementing the activities under all the partnerships within the JAES is the collective responsibility of the Commission. The two commissions have been meeting since 2005 to explore opportunities to enhance institutional cooperation between the commissions. These regular college meetings got new impetus with the adoption of JAES in 2007.

As the nerve centre of the JAES implementation strategy, the shortcoming with respect to developing common values, common and coordinated positions between the continents and globally on issues of common interests rests at the door step of the two Commissions. So far the Commissions have held seven one-day college-to-college meetings.²¹⁵ In the declaration adopted at the latest college-to-college meeting in Brussels on 22 April 2015 the section on democracy, good governance and human rights is three paragraphs which includes:²¹⁶

- Reaffirmation of commitment to operationalization of the AGA and a strong African human rights system
- Encouragement to African states to ratify regional human rights instruments
- Collaboration in elections, including between observer missions, and in addressing corruption
- Commitment to the objectives of the African year of women’s empowerment (2015)
- Decision to hold next human rights dialogue in ‘the margins of the Banjul Commission in the coming months’
- Joint commitment to promote economic and social rights and full respect of human rights in business activities

This does not mean that these paragraphs are the only ones touching on human rights, for example the very current issue of migration to Europe is dealt with under the heading human development.

vii. Sub-regional political dialogues

Political dialogue has also been taking place between the EU and other sub-regional African organisations. The EU considers RECs as ‘prime building blocks for EU-Africa relations’. As such, it is only through more intensive and substantive political dialogue and cooperation that the EU and sub-regional African IOs will become better as strategic partners to face common challenges.

Commission (2015) Better regulation toolbox, available at < http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf > 219.

²¹⁵See Joint Declaration from the 4th AU/EU College-to-College Meeting – 8 June 2010, Addis Ababa; Joint Declaration – 5th College-to-College meeting of the EU Commission and AU Commission, 1 June 2011; 6e réunion de collège à collège, Déclaration commune, Addis-Abeba, 26 avril 2013. Earlier college-to-college meetings were held in Brussels in 2005, Addis Ababa 2006, Brussels 2009 and Addis Ababa 2010.

²¹⁶7th College-to-College meeting Joint Declaration Brussels, 22 April 2015, paras 14-16.

The EU and ECOWAS have a long-standing and continuous political dialogue, with interactions such as a twice-yearly ministerial troika and senior officials meetings.²¹⁷ The dialogue is broad focused on peace, security and stability, migration issues, drug trafficking and improved governance. There is no specific focus on human rights. Considering that most conflicts in the sub-region have been triggered by the proliferation of small arms and light weapons and their ammunitions, the EU and ECOWAS agreed to enhance partnership in preventing, combating and eradicating their proliferation.²¹⁸ In 2006, the EU granted a financial support to a multi-donor project which aimed at strengthening the capacities of the regional body and its member states to control the movement of small arms. However, the implementation of the initiative, which was termed the Economic Community of West African States (ECOWAS) Small Arms Control Programme (ECOSAP) was fraught with structural constraints, particularly competing and often conflicting priorities between the project and ECOWAS Small Arms Unit. Thus, in light of the initiatives slow progress, the EU and other donors in 2010 decided not to prolong their support.²¹⁹ Meanwhile at the 20th political dialogue in November 2014, the EU 'expressed its appreciation of the measures being taken by ECOWAS to defend the gains of the democratization process and the rule of law in West Africa.'²²⁰

The EU has also been conducting political dialogue with the Southern African Development Community (SADC) for the past twenty years. The SADC-EU dialogue was created with the aim of improving dialogue between the two parties, thereby contributing to peace, democracy and sustainable development among others.²²¹ In the area of human rights, the SADC-EU dialogue has fared better as compared to the EU-ECOWAS dialogues with discussions centring on the human rights situation in specific countries. For example, freedom for the media was called for in discussions on Zimbabwe.²²² This may be explained by the fact that the avowed objective of the dialogue is the respect for human rights.²²³ Nevertheless, the dialogue has lately been focused more on issues of climate change, regional integration and peace and stability as reflected in the 2013 communiqué of the SADC-EU Ministerial Political Dialogue.²²⁴

The Economic Community of Central African States (ECCAS) and the EU have had a meeting at Ministerial Troika level in 2008. The discussion was dominated by issues of peace and security. Due to its geographical location, and consequently its member states, the ECCAS is necessarily concerned with protracted war in the Great Lakes region as well as with the instability in member states such as in Chad and Burundi.²²⁵ Although one of the objectives of the first Ministerial Troika meeting was to

²¹⁷European Union External Action 'EU relations with the Economic Community of West African States' http://eeas.europa.eu/africa/ecowas/index_en.htm.

²¹⁸ Council of the European Union 'ECOWAS-EU Joint Declaration on Proliferation of Small Arms and Light Weapons (SALW) Ministerial Troika Meeting, Luxembourg, 24 April 2007.

²¹⁹ Cédric Poitevin, 'European Union initiatives to control small arms and lightweapons:towards a morecoordinatedapproach' Non-proliferation papers, No. 33 December 2013, 9.

²²⁰ECOWAS 'ECOWAS, EU to strengthen cooperation on peace, security, trade and development issues', press release 225/2014, 28 November 2014, <http://news.ecowas.int/presseshow.php?nb=225&lang=en&annee=2014>.

²²¹Delegation of the European Union to Botswana and SADC 'Political dialogue: "the Berlin initiative" ' <http://eeas.europa.eu/delegations/botswana/eu_sadc/political_relations/index_en.htm>.

²²²Reliefweb 'EU/SADC Ministerial meeting: communiqué' (8 November 2002) <http://reliefweb.int/report/angola/eusadc-ministerial-meeting-communiqu%C3%A9>.

²²³Article 2 of the Declaration by the EU / Southern African Ministerial Conference of 5/6 September 1994 in Berlin.

²²⁴Communique SADC-EU ministerial political dialogue, 20 March 2013, Maputo, Mozambique.

²²⁵Council of the European Union '1st meeting of ECCAS and the EU at Ministerial Troika level Brussels, 10 November 2008 Final Joint Communiqué' http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/103981.pdf.

establish a follow-up mechanism, the lack of information on the mechanism and on subsequent Ministerial Troika meetings augurs no good. It seems that this first meeting might also have been the last.

The EU does however try to improve the situation of human rights in the East African region through the Regional Political Integration and Human Security Support Programme, a tripartite collaboration between the EAC, COMESA and IGAD. Supported by the EU, the programme aimed at improving the capacity of oversight institutions such as the court, regional parliaments and civil society.²²⁶ Human rights does not feature in dialogue with COMESA which is focused on development cooperation through trade and greater integration.²²⁷ 2014 saw the sixth Ministerial Meeting between IGAD²²⁸ and the EU, thus pointing to a long-standing dialogue and cooperation between the two parties. The dialogue with IGAD is however mostly focused on security matters with the conflict in Sudan, South Sudan and Somalia taking centre stage as evidenced by the last joint IGAD-EU communiqué.²²⁹

C. Conclusions

The AU and the EU have a long history of relationship. This relationship has evolved and transformed along the years. Theoretically, the relationship has evolved from a colonised/coloniser relationship to a partnership of equal parties within the framework of JAES. However, continued differences in history, culture, development and global power and standing between the AU and the EU make continued efforts to negotiate differences to consolidate commonalities inevitable.

The AU-EU Strategic Partnership provides for the key steps that need to be taken to facilitate meaningful conversations between the two continents. The fledging platforms for dialogues on governance and human rights between the two continents are steps in the right direction. However, for these dialogues to be meaningful, first, they should be bold, frank and open on all issues of governance and human rights. Second, knowledge, capacity and resource deficits on the side of Africa need to significantly improve in order to make this partnership one of equals, in practical terms.

The continent to continent conversations need to be more inclusive, consistent, coherent, institutionalised at all levels and interlinked with on-going processes on both sides. The capacity to implement and monitor implementation of responsible institutions urgently needs to be further strengthened.

²²⁶East Africa Community 'EAC-COMESA-IGAD in Joint Programme to Improve Governance' (2011) http://federation.eac.int/index.php?option=com_content&view=article&id=148:eac-comesa-igad-in-joint-programme-to-improve-governance-&catid=40:news&Itemid=147.

²²⁷Delegation of the European Union to the Republic of Zambia and COMESA 'Framework for COMESA-EU relations' http://eeas.europa.eu/delegations/zambia/eu_comesa/political_relations/index_en.htm.

²²⁸Intergovernmental Authority on Development has eight member states from Eastern Africa.

²²⁹Joint IGAD-EU Communiqué (2014) http://igad.int/attachments/802_IGAD-EU%20JOINT%20COMMUNIQUE.pdf.

VI. Financing

A. EU financial contribution to the AU System

1. History

From 1975 to 2000, partnership between the EU and AU were conducted mainly in terms of the Lomé Conventions which were envisaged as a comprehensive trade agreement coupled with financial assistance. Although the partnership was between the then European Community and the ACP group, until the adoption of the Joint Africa-EU Strategy, the term Africa was always limited to sub-Saharan Africa.

With the adoption of the TEU in 1992, development policy was rigidly entrenched into the EU (supranational and member states) policy towards Africa. Support for African states and regional institutions was further reinforced with the adoption of the MDGs and the successive organisation of the International Conference on Financing for Development in 2002. These events triggered a boost in the volume of aid from both the EU Commission and member states. The EU collectively committed itself to boost aid from previous 0.33 percent to 0.39 of GNI by 2006.²³⁰ In reaching its target before the deadline, the EU in May 2005 set an enthusiastic target of reaching 0.56 and 0.7 percent of GNI by 2010 and 2015 respectively.²³¹ Half of these increases are to be allocated to sub-Saharan Africa. The increased commitment in quantity of aid made it more urgent for the Union to re-assess the issue of quality of aid, and for the EU to adopt a series of practical recommendations which serve as the basis for the Union's common position on aid effectiveness.²³²

In 2005, the European Parliament chaired a dialogue leading to the adoption of the European Consensus on Development (ECD). The ECD espoused EU's principles and objectives on aid effectiveness with emphasis on donor coordination.

With regard to support for the EU the focus is more on peace and security than democracy and human rights, even though as illustrated below there is significant financial support for the latter.

2. Fields of funding

a) European Instrument for Democracy and Human Rights

The European Instrument for Democracy and Human Rights (EIDHR) supports human rights and democratization efforts in third states and through partnership with intergovernmental institutions such as the AU. The mandate of the instrument consist of addressing issues such as torture, death penalty, socio-economic rights, women and children's rights, electoral observation, and rights of LGBTI persons. However, considering that 90 % of the funds under this instrument are channeled to human

²³⁰Maurizio Carbone, 'Between EU actorness and aid effectiveness: the logics of EU aid to sub-Saharan Africa.' *International Relations* 27.3 (2013), 341-355, 346.

²³¹Gorm R. Olsen, 'The EU's Africa policy between the US and China; interests, altruism and cooperation', in Maurizio Carbone *The European Union in Africa: Incoherent Policies, Asymmetrical Partnership, Declining Relevance?*. Manchester University Press (2013)43-56, 51.

²³² Carbone (n 230).

rights defenders and CSOs defending democracy and human rights, direct assistance to AU institutions for the implementation of international standards have been limited.²³³

b) AU Support Programme

The EU as part of its institutional support programme to the AU signed in 2006 a multilateral agreement with the AU Commission. As part of the agreement, the EU committed to the AU €55 million as a means of facilitating an 'integrated and comprehensive support' to five main AU institutions with human rights mandates.²³⁴ Under the first phase (2006-2013), funding assisted the AU Commission, Pan African Parliament (PAP), African Commission for Human and Peoples' Rights (African Commission) and the African Court for Human and Peoples' Rights (African Court) to revamp and enhance their capacities in human rights and democracy building. However, great challenges remain. For example the African Commission reported in its activity report covering the second half of 2014 that communications with its Secretariat in Banjul, The Gambia, is a serious challenge with telephones, email, internet and fax not functioning properly leading Member States and other stakeholders to express frustration.²³⁵ At the same time as there is a clear need for support, the African Commission has been critical of programme activities being supported exclusively by donors and that even many legal officers are paid by donors rather than by the EU. While receptive to this criticism the AU has not taken any action to address the situation by providing its own funding for programme activities.²³⁶ With regards to the AU Commission, the financial assistance played a key role in the establishment of the African Governance Architecture (AGA), though challenges still remain in the operationalization of AGA and its Platform.²³⁷

c) AU Support Programme II

The EU in March 2014 renewed funding for the AU Support Programme. AUSP II has a three year life span (2014-2017) with a financial envelope of €28.8 Million.²³⁸ €3 Million was set aside from the original amount as a contribution to the refurbishment of the AU headquarters in Addis Ababa. The primary objective for the renewal of the AUSEP according to the EU is based on its commitment to the AU 'in terms of capacity building, institutional and programme implementation'.²³⁹ Moreover, as a 'flagship programme' of the AU-EU strategic partnership initiatives, AUSEP II is envisaged to provide intervention to the 'acceleration of African integration and sustainable development efforts' in

²³³ EUROPA 'What is The European Instrument for Democracy and Human Rights (EIDHR)?' (2014) available at <<http://www.avrupa.info/tr/eu-and-civil-society/what-is-the-european-instrument-for-democracy-and-human-rights-eidhr.html>>.

²³⁴ African Union 'European Union and African Union renew the African Union Support Programme II with 31.8 Million Euro', (2014) available at <<http://dcpauc.au.int/en/content/european-union-and-african-union-renew-african-union-support-programme-ii-318-million-euro>>.

²³⁵ 37th Activity Report of the African Commission on Human and Peoples' Rights para 46.

²³⁶ See eg 34th Activity Report of the African Commission on Human and Peoples' Rights paras 24-25; 37th Activity Report para 52.

²³⁷ South African Institute of International Affairs, 'The Road Ahead for the African Governance Architecture: An Overview of Current Challenges and Possible Solutions', (2014) available at <www.saiia.org.za/.../502-the-road-ahead-for-the-african-governance-arc>.

²³⁸ African Union Commission 'Joint Press Release: European Union and African Union renew the African Union Support Programme II with 31.8 Million Euro', (2014) available at <<http://dcpauc.au.int/en/sites/default/files/EU%20Support%20Program%20II-%20PR%20%282%29.pdf>>.

²³⁹ *ibid*.

addition to enhancing the capacity of the AU institutions, particularly those with democracy and human rights mandates.

d) Security Sector Capacity-Building Programme

With the aim of enhancing the AU's capacity in providing intervention in areas such as conflict prevention, peacekeeping, peacebuilding and post-conflict reconstruction, the AU commission in January 2013 adopted the Policy Framework on Security Sector Reform (PFSSR). Despite being initiated by the AU Commission and implemented by diverse domestic and international actors,²⁴⁰ the initiative is funded solely by the EU. As of the end of September 2014, the EU has committed €85 million to the framework.²⁴¹

e) Pan-African Programme

In 2009, the AU called on the EU for the establishment of a financial instrument to facilitate the Joint-AU-EU strategy. Based on EU Regulation No. 233/2014, the Pan-African Programme (PanAF) was established as a financing development cooperation instrument (DCI) for a six year period (2014-2020). With an initial financial envelope of €845 million channelled to the programme,²⁴² it is expected that the AU will be able to utilize this resource to reduce poverty which is considered as a 'primary objective of EU development policy'. Again, considering that the PanAF is not a replacement but a supplementary of existing EU financial instruments, it complements the operationalisation of the overarching objectives of the recent outcome of the 4th AU-EU Summit in Brussels in April 2014. PanAF is tailored towards providing interventions in areas such as (i) democracy, rule of law and human rights; (ii) peace and security; (iii) global and cross-cutting issues; (iv) human development; and (v) sustainable and inclusive development and growth as well as continental integration. Initiatives under this framework will facilitate progress on the eradication of hunger and poverty (MDG 1) through the Comprehensive Africa Agriculture Development Programme (CAADP).

Whilst considerable importance is placed on regional integration (51 percent), human development and human rights related issues receive the second (22 percent) and fourth priorities (11 percent) respectively. This breakdown establishes that the EU places higher premium on regional integration for trade purposes than issues of human rights and democracy building which are constant rhetoric of the Union and its member states. Funds for the instrument will be drawn from the 11th EDF.

f) Comprehensive Africa Agriculture Development Programme

The EU continues to provide relief to food security actions within the framework of the African-led Comprehensive Africa Agriculture Development Programme (CAADP). Adopted in 2003, the overarching aim of CAADP is to help AU institutions to assess and plan strategies for food security in

²⁴⁰These actors include the UN Office to the AU (UNOAU), the UN Office for Project Services (UNOPS), the SSR Unit in the UN Department of Peacekeeping Operations (DPKO SSR Unit) and the African Security Sector Network (ASSN).

²⁴¹African Union 'African Union to immediately receive close to USD 18.5 Million direct support to its Ebola operation ASEOWA', (2014) available at <<http://pages.au.int/ebola/news/african-union-immediately-receive-close-usd-185-million-direct-support-its-ebola-operation>>.

²⁴²EurActiv.com 'EU launches €845 million Pan-African initiative' (8 October 2014) available at <<http://www.euractiv.com/sections/development-policy/eu-launches-eu845-million-pan-african-initiative-307774>>.

the region. Taking into account, the fact that the programme is an essential framework for development cooperation within the AU on agriculture, the EU relies on two instruments for collaboration. These are the EDF and the EU Food Security Thematic Programme. Accordingly, as of September 2014, the EU has contributed €5 million to support the multi-donor trust fund established by the AU Commission and the NEPAD Planning and Coordination Agency (NPCA).²⁴³ The assistance provides support tailored towards the strengthening of the institutional capacity of AU institutions to effectively operationalise the continental agriculture development policy.²⁴⁴

g) African Peace Facility

Established in 2004, the African Peace Facility (APF) is the main EU funding instrument for promoting peace and security in Africa.²⁴⁵ Though its original remit was to provide funding for African-led peace support operations (PSOs), since the establishment of JAES, this mandate has been extended to support the 'peace and security' ambit of the JAES which include (i) operationalisation of the African Peace and Security Architecture (APSA); (ii) provide funding for African-led peace support operations (PSOs); and (iii) enhance dialogue on challenges to peace and security in Africa. Through this facility, the AU through its Peace and Security Council (PSC) have successfully enhanced capacity of the African Standby Force (ASF), provided PSOs in addition to the development of an early response mechanism.

In terms of capacity building, the facility has supported the AU Commission specifically through the employment of personnel in its Peace and Security Department arms; whiles providing workshops for the African Standby Force (ASF). Whereas €1,052.1million was allocated to PSOs, capacity building and early response mechanism (ERM) received only €97.2 million and €15 million respectively.

Nonetheless, Olsen²⁴⁶ avers that the facility has the potential of paving 'the way for a strong African involvement in conflict management' and intervention in PSOs would not have been possible without the assistance of the APF.

Olsen²⁴⁷ avers that the large amount of aid allocated to 'security-related programmes ultimately seem to suggest that selfish concerns have become increasingly more important in comparison to altruistic concerns'. First, by emphasizing on security as core component of the EU strategy for Africa, it entrenches the position of France and UK as permanent members of the Security Council. Second, it is inevitable for the Union to provide aid to the AU in order to avoid mass migration to Europe from conflict affected AU states. This collaboration, as evident by several PSOs is built on a division of labor.

²⁴³Africa-EU Partnership, 'A Sound Framework for African Agriculture', (2014) available at < <http://www.africa-eu-partnership.org/newsroom/all-news/sound-framework-african-agriculture>>.

²⁴⁴European Commission 'Sustainable agriculture and rural development policy - agricultural development '(2014) <https://ec.europa.eu/europeaid/sectors/food-and-agriculture/sustainable-agriculture-and-rural-development/agricultural-development_en>.

²⁴⁵European Peacebuilding Liaison Office 'EPLO Briefing Paper 3/2012: The African Peace Facility June 2012', (2012) available at <http://www.eplo.org/assets/files/4.%20Members%20Area/FfP/EPLO_Briefing_Paper_3-2012_African_Peace_Facility.pdf>.

²⁴⁶Gorm R. Olsen, The EU and military conflict management in Africa: for the good of Africa or Europe? *International Peacekeeping*, 16(2), (2009) 245-260, 253. See also JakkieCilliers, *The African Standby Force: an update on progress*. No. 160. Institute for Security Studies, (2008) 12.

²⁴⁷Olsen (n 231) 51.

Accordingly, as the EU supplies the funds and logistical support, the AU provides ‘boots on the ground’.²⁴⁸

B. Member state initiatives

Cooperation between the German Government (GIZ) and the AU Commission in the field of good governance commenced in 2006. GIZ has provided extensive support to the operationalisation of AGA as well as to African regional human rights institutions such as the African Court and Commission and support to the AU Commission’s Department of Political Affairs and Department of Social Affairs.

With GIZ financial support of €6.5 million for the period October 2010 to September 2013, the AU Commission through its Democracy and Electoral Unit, provided capacity development assistance to National Election Management Bodies and Election Observation Missions to member states before and during elections. Regarding human rights related issues, cooperation has been broadened to assist the DSA in combating violations such as Harmful Traditional Practices (HTP); specifically Female Genital Mutilation (FGM). This area is being tackled through the effective operationalization of gender policies in AU member states.²⁴⁹

Initiated in December 2010, the AU Governance and Capacity Building Programme 2011-2012 (GCP) is a joint Department for International Development (DFID-United Kingdom) and Swedish International Development Cooperation Agency Programme. The mandate of the initiative is to assist the AU Commission in promotion of good governance and rule of law in AU member states. With £4,614,775 (93.47%) drawn from the original budget of £4,937,328 by the end of 31 March 2014, the AU Commission achieved some success in areas of public sector policy and election monitoring.²⁵⁰ Following the expiry of the first phase of the programme in 2013, it has been extended to provide support for the AU Commission’s Strategic Plan 2013-2016 towards improving the continent’s good governance, democratic principles as well as peace and security. However, it is imperative to point out that the effectiveness of the programme will depend on the manner in which the AU Commission takes ownership of its implementation.

C. EU financial contribution to RECs

In the overarching instrument adopted by the European Commission in 2005 and referred to as the ‘EU Strategy for Africa’, the Union affirmed its commitment to collaborate with ‘sub-regional organisations’ (RECs) in addressing Africa’s manifold problems.²⁵¹ The document covers a ten-year period (2005-2015) and affirms commitments in the field of human rights, peace and security and democracy building.²⁵² However, much of the support provided to RECs has been focused on regional

²⁴⁸John J. McGrath, *Boots on the ground: troop density in contingency operations*. Government Printing Office, e, Agency Publisher: U.S. Department of Defense, U.S. Army, Combat Studies Institute (2006) iii.

²⁴⁹Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH ‘Strengthening the capacity of the AU Commission in the field of good governance’, (2014) available at <<https://www.giz.de/en/worldwide/15869.html>>.

²⁵⁰Department for International Development ‘African Union Governance and Capacity Programme’, (2014) available at <<http://devtracker.dfid.gov.uk/projects/GB-1-200156/>>.

²⁵¹http://europa.eu/legislation_summaries/development/african_caribbean_pacific_states/r12540_en.htm

²⁵² Aldo Ajello, ‘The EU Security role in the Great Lakes Region’ in Adebajo Adekeye *The EU and Africa: From Eurafrique to Afro-Europa*. Columbia University Press, (2012) 277-294, 278.

integration rather than human rights.²⁵³ Some institutional support has been targeted at regional political co-operation and institutional capacity development such as the support of the EU and GIZ to SADC from 2012 onwards.²⁵⁴ It should be noted that this support was provided in a context where the SADC Tribunal, which had handed down progressive human rights judgments, was dismantled by the SADC Summit following a judgment that upset Zimbabwe.²⁵⁵

Support provided to the Economic Community of Central African States (ECCAS) to improve the security situation in central Africa was made conditional on ECCAS merging with the Communauté Économique et Monétaire de l'Afrique Centrale (CEMAC) which has a membership that overlaps with ECCAS.²⁵⁶ Security and improved governance has also been a focus area in support to ECOWAS²⁵⁷ and for IGAD where the EU in 2014 provided a financial envelope of €1.1 million through which IGAD was expected to collaborate with the AU Commission and the international community to seal an agreement for resolving the hostility between the government and the opposition in South Sudan.

D. Evaluation on aid earmarking, coordination and effectiveness

'Effective multilateralism' according to Whiteman & Haastrup²⁵⁸ has become a chief aim of the EU's development policy towards the AU. Seemingly, one of the overarching foreign policy aims of the EU is to become an autonomous development actor within the AU, particularly through the consolidation of its efforts at both the horizontal (within the Commission and/or the Council) and vertical level (between EU institutions and member states). Indeed, the effective remedy for the fragmentation and achievement of greater cohesiveness certainly depends on the extent of convergence of preferences between the supranational institutions and the member states.²⁵⁹

For this reason, the European Union's (Commission and member states) competencies, apart from being a funder for AU projects is to constructively and systematically exploit potential to promote coordination, coherence and complementarities within the Union and among member states in advancing the EU's common position in the AU.²⁶⁰ So, beyond enacting several policy

²⁵³Common Market for Eastern and Southern Africa 'Press release: EU to provide \$110m for COMESA projects' (2014) available at < <http://www.comesa.int/attachments/article/1209/Press%20Release%20-%20EU%20funds%20COMESA%20projects.pdf>>; TradeMark Southern Africa 'Multi-million dollar projects to watch in 2011' (2010) available at < <http://www.trademarksa.org/news/multi-million-dollar-projects-watch-2011>>.

²⁵⁴Southern African Development Community 'SADC Secretariat's Institutional Reform' (2012) available at http://www.sadc.int/files/6913/6423/1399/W5699_SADC_BOOKLET_GB.pdf; SADC 'SADC Secretariat Meets International Standards of Institutional Compliance' (2012) < <http://www.sadc.int/sadc-secretariat/institutional-strengthening/>>.

²⁵⁵ See Erika De Wet (2013) 'The Rise and Fall of the Tribunal of the Southern African Development Community: Implications for Dispute Settlement in Southern Africa' *International Centre for Settlement of Investment Disputes review*, 28(1), 45-63; Laurie Nathan (2011) Solidarity triumphs over democracy-the dissolution of the SADC tribunal < http://repository.up.ac.za/bitstream/handle/2263/19451/Nathan_Solidarity%282011%29.pdf?sequence=1&isAllowed=y>.

²⁵⁶Tobacco Institute of Southern Africa, 'Economic Community of Central African States (ECCAS)' (2011) <<http://www.tobaccosa.co.za/browse.php?catid=106&sub=181>>.

²⁵⁷Ajello (n 252) 277; ECOWAS, 'EU/ECOWAS: € 72 million to fund four major projects' (2013) <<http://www.pir-rip.ecowas.int/non-class%C3%A9-en/euecowas-e-72-million-to-fund-four-major-projects/?lang=en>>.

²⁵⁸ Toni Haastrup, and Richard G. Whiteman 'Locating the EU's strategic behaviour in Sub-Saharan Africa: an emerging strategic culture?' in Maurizio Carbone (ed). *The European Union in Africa*. Manchester, U. K.: Manchester University Press (2013): 57-76, 64.

²⁵⁹Fredrik Söderbaum (2013) 'The European Union as an actor in Africa: internal coherence and external legitimacy', in Maurizio Carbon *The European Union in Africa*, Manchester University Press, 23-42,32.

²⁶⁰Florian Kitt, 'EU Aid Architecture: Recent Trends and Policy Directions.' *The World Bank Group. Concessional Finance and Global Partnerships Vice--Presidency* (2010)16.

recommendations towards improving coherence, the European Commission endorsed in 2005 the Paris Declaration agenda and also put forward an integrated EU position on aid at the 2008 Third High Level Forum on Aid Effectiveness in Accra. As a step towards achieving the targets of the Paris Declaration and the objectives of the Accra Agenda for Action (AAA), the EU's Official ODA to the AU member states grew by 26 percent (€2.7 billion) from 2004 to 2009.²⁶¹ This constituted 40 percent of the EU's external aid funds. Yet, this increase did not address the problem of fragmented and uncoordinated EU bilateral and multilateral aid to the AU (institutions and member states).

Using an aggregate data from fourteen selected EU member states and the European Commission, only forty-six percent of member states and the European Commission jointly used coordinated mechanisms for aid delivery.²⁶² Moreover, the European Commission alone scored a lesser (44 per cent) in this area. In terms of coordinated missions, the European Commission and member states convergence effort was even poorer with a percentage of thirty-three. In light of the above development, one observer has affirmed that 'empirical evidence suggests that there was even less coordination in the first decade of the new century than in previous decades'.²⁶³

Thus, notwithstanding the numerous commitments made at different international forums and the emergence of new standards (EU target, AAA and Paris agenda) the EU is still battling to address aid fragmentation. Knack and Rahman²⁶⁴ have affirmed that aid proliferation and fragmentation beyond placing high bureaucratic cost on multilateral institutions like the AU nurtures corruption and results in waste of resources. This lack of cohesiveness has not only led to minimal success of many EU interventions within the AU, but 'has undermined the EU's credibility'.²⁶⁵

E. Conclusions

Beyond strengthening existing AU regional programmes, the EU and its member states have sought to initiate new programmes at the AU level for the implementation of international norms. On the other hand, the EU's security engagement with the AU has, over time overshadowed other important themes such as human rights and democracy. This is evidenced in the significant amount of resources allocated for security-related programme in the AU. However, one important dimension of this development has been the EU's enthusiasm to cooperate with the AU, particularly with the establishment and continuous funding of the APF. Yet in examining the role of the EU in this area, it is hard to avoid the conclusion that its aim is to build its identity and presence as a security actor and peace-builder rather than merely to solve the manifold of crises in the region.

It is apparent that the EU's policies and roles in the AU demonstrate several institutional tensions arising from the framing and execution of policies. Although the European Consensus on Development and the Joint Africa-EU Strategy have contributed to an enhancement of the Union's development cooperation with the AU, the European Commission and EU member states are still not functioning as coherent and unified development actor.²⁶⁶ Instead, the European Commission operates separately

²⁶¹ Kitt (n 260) 6.

²⁶² Kitt (n 260) 16.

²⁶³ Maurizio Carbone 'Between EU actorness and aid effectiveness: the logics of EU aid to sub-Saharan Africa' *International Relations* 27.3 (2013): 341-355, 343.

²⁶⁴ Stephen Knack, and Aminur Rahman. 'Donor fragmentation and bureaucratic quality in aid recipients.' *Journal of Development Economics* 83.1 (2007): 176-197.

²⁶⁵ Carbone (n 263).

²⁶⁶ Carbone (n 263) 341.

and it is often envisaged as the '29th member state' or just another actor. A major rationale advanced for this lack of coordination and complementarity has been the European Commission's inability to lead the process of merging the geostrategic interests of most member states in its quest of acting as unified actor with the AU. Therefore for the EU to overcome its shortcoming in the fields of foreign aid to the AU there is the need to act cohesively and autonomously whilst projecting a common vision as espoused in JAES.

VII. Case studies

A. Food security

1. Introduction

Food security or the right to adequate food is fundamental for the realisation of other human rights. Without the fundamental right to be free from hunger, other human rights and fundamental freedoms (such as the right to life and health) lose their meaning and importance.²⁶⁷ Food security according to the Food and Agriculture Organisation (FAO) is when 'all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.'²⁶⁸ While not explicitly set out as a right in European human rights law, the right to food is clearly linked to other rights such as the right to social security recognised in article 34 of the Charter of Fundamental Rights of the European Union. In Africa the right to food, while not explicitly included in the African Charter, has been held by the African Commission as an implied right.²⁶⁹

The EU has over the years taken numerous steps both at the regional and country levels 'to address crises which undermine agriculture production and the movement of food to the market, and have adverse effect on availability'.²⁷⁰ At the second EU-Africa Summit in Lisbon in 2007, the EU and AU committed to promote and enhance policy coherence for development in areas of food safety, food security and food quality.²⁷¹ The emphasis on policy coherence in the text is significant for African food security for two reasons; (i) it means that the Union commits to enhance the availability of food by increasing the volume of aid; and (ii) refrain from creating hurdles for African development whilst pursuing its domestic policies.

Further, the EU under a new bilateral engagement with the AU on agriculture advancement committed to extend support to the AU's agriculture framework as entrenched in CAADP.²⁷² It has therefore supported steps and strategies such as early warning systems (EWS) to address unforeseen 'shocks' *inter alia* severe drought and flooding.²⁷³ The EU and the AU under JAES also committed to enhancing policy coherence for control, trade and development in fisheries.²⁷⁴ The achievement of such initiatives is imperative, particularly if food security in shock-prone regimes is to be assured.

²⁶⁷Margret Vidar "The Interrelationships between the Right to Food and Other Human Rights." *Food and Human Rights in Development* 1 (2005) 141-160.

²⁶⁸Food and Agriculture Organisation (2004) 'Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security', Adopted by the 127th Session of the FAO Council November 2004, 5.

²⁶⁹*Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 65.

²⁷⁰ Adrian Flint, *Trade, poverty and the environment: the EU, Cotonou and the African-Caribbean-Pacific bloc*. Basingstoke: Palgrave Macmillan, (2008)108.

²⁷¹Europafrica.net 'The Joint Strategy', <<http://europafrica.net/jointstrategy/>>.

²⁷²Alan Mathews, 'Unfulfilled expectations? The EU's agricultural and fisheries policies of Africa' in Carbon (n 259) 189.

²⁷³Flint (n 270).

²⁷⁴Mathews (n 272) 195.

Although the EU is not the sole actor in this field, its role in the African food security is pronounced. As observed by Engel *et al*,²⁷⁵ some of the EU's policies are still debated as inadequate in strengthening the region's agricultural and fishery development.

This case-study provides an overview of how the EU interacts and collaborates with the AU and RECs in tackling hunger and malnutrition in Africa. To do this, it will provide an overview of the policy interrelations and collaboration between the EU external policy and the AU in ensuring sustainable agriculture and improve access to adequate and nutritious food in African countries.

2. Context

The principal aim of the EU's Common Agricultural Policy (CAP) is to ensure 'European self-sufficiency' by protecting farmers' income through subsidy.²⁷⁶ It was designed to achieve five basic ends: (i) stabilize markets; (ii) ensure availability of supplies (iii) enhance a fair standard of living for the agricultural community; (iv) accelerate agricultural productivity; and (vi) ensure reasonable prices to consumers.²⁷⁷ Its potential effect for addressing food insecurity in Africa are many and differ, depending on a country's food import, dependence on production and consumption prices. It accounted for approximately 41 percent of the Union's budget for 2013.²⁷⁸ It consists of two pillars, namely Pillar I (Direct payments) and Pillar II (Rural development).

CAP has been chastised by scholars and development stakeholders for its domestic support and trade measures.²⁷⁹ CAP has squeezed Africa from two sides: First the subsidies have ensured that surplus EU products were exported to Africa by paying exporting firms the difference between world market price and the EU in the form of subsidies. This has led to the accusation that the EU is dumping its surplus on the African markets. Although this assistance has contributed to cheap food imports to AU states, they have threatened efforts by local producers to compete with imports. Second, the subsidized production of competing crops harmed African producers of topical crops such as tobacco, sugar and cotton. Hence, products such as rice, meats, dairy products which are significantly protected by the CAP hardly figure at all in Africa's exports to Europe.²⁸⁰

A number of initiatives have been launched 'which did not exist a decade or more ago' in addressing famine.²⁸¹ These initiatives were adopted in light of four areas of concern for food security, specifically (i) food availability; (ii) access to food; (iii) utilization that underlie chronic hunger; and (iv) the shocks that drive temporary food insecurity.

Further, the efforts generally seek to improve collection, analysis and communication of data and information. These strategies undeniably have the prospect of tracking progress made, the success of

²⁷⁵European Centre for Development Policy Management 'EU policy coherence for food security - Aligning parallel agendas' Discussion Paper No. 153 (2013) vii.

²⁷⁶Flint (n 270) 102.

²⁷⁷Richard Howarth "The CAP: History and attempts at reform." *Economic Affairs* 20(2) (2000): 4-104.

²⁷⁸Henrike Klavert, Paul Engel, and Eleonora Koeb. *Still a thorn in the side? The reform of the common agricultural policy from the perspective of policy coherence for development*. No. 126. European Centre for Development Policy Management Discussion Paper, (2011) v).

²⁷⁹Flint (n 270) 103; Matthews (n 275) 190-191.

²⁸⁰Matthews (n 272) 190.

²⁸¹ Steve Wiggins, and Sharada Keats "Current state of food security in Africa and the Africa-EU partnership on the Millennium Development Goals." *Paper for Second Joint Experts Group Meeting, Africa-EU MDGs Partnership*. Vol. 24. (2009) 26.

initiatives adopted to alleviate hunger, while keeping the issues high on the agenda of AU-EU policy makers.

It is anticipated that these measures could alleviate the conditions that cause chronic hunger. A strong significance is however placed on boosting domestic food production at the national level, even though a glance at the record of the level of production across countries in the African region display a vast variation from country to country, despite their similarity in physical endowments or levels of development.²⁸²

These initiatives thus seek to improve agricultural policy making of the AU. It is imperative to indicate that higher food production does not only have the prospect of cutting down prices of food but also creates more jobs and income opportunities for the rural poor. Rural or inland farmers will produce more at lower prices especially if their input-output ratios improve.

3. AU initiatives

a) Comprehensive Africa Agriculture Development Programme (CAADP)

In 2003 CAADP was established by the AU. Its overarching aim is to raise agricultural productivity by at least six per cent per year through increase of public investment in agriculture to 10 percent of national annual budgets. It rests on four key pillars.

Pillar I encompasses land and water management. This pillar aims to extend the area under sustainable land and reliable water management (SLWM) systems. It therefore calls for support in building soil fertility whilst increasing irrigation, particularly small-scale irrigation.

Pillar II relates to market access. This segment advocates for accelerated growth in the agricultural sector by raising the capacities of private entrepreneurs whilst improving local infrastructure such as transportation, storage and packaging, retail facilities, information technology and overall supply chains.

Pillar III covers food supply and hunger. This component seeks to reduce hunger by increasing food supply in the region through raising smallholder productivity whilst improving responses to food emergencies. It specifically focuses on the chronically food insecure, by improving domestic production and marketing, facilitate regional trade in staple foods as well as build household productivity and assets.

Finally, pillar IV pertains to agricultural research and dissemination. Under this pillar, CAADP seeks to improve agriculture production through the distribution of appropriate new technologies in order to assist farmers adopt such new options in their implementations.

In particular, under the third Pillar, a number of activities have been undertaken by the EU to ensure the effective realization of the objectives of CAADP. Some of these initiatives include the (i) Regional Enhanced Livelihoods for Pastoral Areas (RELPA) for improving the livelihoods of pastoralists; (ii) Making Markets Work for the Poor: Enhancing Food Security and Productivity Growth in Eastern and Southern Africa (MMWP) which involves a three-year capacity building programme for strengthening

²⁸²Wiggins and Keats (n 281).

regional agricultural productivity, food security and poverty reduction; (iii) the Improved Regional Trade in Food Staples (RTFS) equally aims at assembling spatial evidence on existing regional productivity and trade in staple food. It is moreover developing predictive systematic tools that enhance spatial survey of the conclusion arising from standard natural and policy shocks with regards to agriculture at the regional and national levels.

Prominent among the European Commission's funding support include €5 million contribution towards a project aimed at capacity-building for CAADP institutions and processes.²⁸³ The Commission has also in total provided € 26 million in support of various agricultural programmes.

b) AU social policy framework

The AU Commission's programme on social development is derived from the need to 'reverse' the region's poverty and improve the 'cumulative process of under development'.²⁸⁴ It was against this backdrop that the AU recognized that agricultural production as well as income in the region has been negatively affected by the predominantly substandard, flawed and unproductive agrarian system.²⁸⁵ Thus, a combination of external setbacks including lack of micro financing, poor infrastructure, livestock diseases and climate change have equally contributed to food insecurity and exacerbated the poverty situation of many African's rural poor, whose livelihood largely depend on subsistence agriculture.²⁸⁶

Consequently, in seeking to address the increased morbidity and mortality of children as a result of lack of vitamin A and nutritional anaemia, the AU Commission adopted a number of resolutions.²⁸⁷ These resolutions set out how the AU will address food insecurity in Africa. Broadly, the AU Commission under this social framework called for the implementation of the commitments undertaken under the CAADP as well as the 2004 Sirte Declaration on Agriculture and Water. It further called for support towards the operationalization of the 2005-2015 African Regional Nutritional Strategy whilst calling on political leaders to provide necessary incentives and support to small producers aimed at boosting agricultural production. The framework finally called on AU leaders to enact and implement legislation to promote production of drought resistant crops and preserve land for food crops.

Consequently, due to the growing awareness of the important role of social protection to the realisation of human rights through the Millennium Development Goals (MDGs), the EU has sought to boost sustainable development through its Migration, Mobility and Employment (MME) partnership

²⁸³Africa-EU Partnership, 'Boosting agriculture, eliminating hunger' (2013-2014) available at <<http://www.africa-eu-partnership.org/success-stories/boosting-agriculture-eliminating-hunger>>.

²⁸⁴African Union (2008) 'Social policy framework for Africa', CAMSD/EXP/4(I) 6.

²⁸⁵African Union 'Social policy framework for Africa', First session of the AU conference of ministers in charge of social development Windhoek, Namibia 27 - 31 october 2008, CAMSD/EXP/4(I).

²⁸⁶European Commission, 'The Africa Union's social policy framework for Africa' (2013) <<http://capacity4dev.ec.europa.eu/hunger-foodsecurity-nutrition/document/africa-unions-social-policy-framework-africa#sthash.qkBMjU6l.dpuf>>

²⁸⁷See Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods – Doc. Assembly/AU/2(XXIII); Declaration on Ending Preventable Child and Maternal Death in Africa –Doc. Assembly/AU/18(XXIII) Add.3; and Declaration on Nutrition Security for Inclusive Economic Growth and Sustainable Development in Africa.

with the AU.²⁸⁸ With sub-Saharan Africa's susceptibility to internal and external shocks, the EU tailored its 2010 European Report on Development to focus on 'Social protection for inclusive development' with specific emphasis on mapping strategies for boosting sub-Saharan Africa's resilience to unexpected shocks, combat poverty and protect existing gains.²⁸⁹ The report affirmed that social protection is feasible and possible especially where there is broad-based social consensus, such as the involvement of civil society organisations (CSOs). Following the adoption of the second AU-EU Action Plan (2011-2013),²⁹⁰ the parties reaffirmed their commitment to reinforce cooperation in key areas such as investment, job creation and economic growth as a vehicle for achieving both economic growth and poverty reduction.²⁹¹

c) AU Commission Agriculture and Food Security Division

Recognizing that agriculture is the primary element for the attainment of food security and alleviation of hunger in the region, the Agriculture and Food Security Division (AFSD) of the AU Commission was established. The primary objective of the unit is to coordinate and harmonize agricultural policies and initiatives as a means of enhancing the livelihoods and food security of Africans.²⁹² The AFSD is further expected to strengthen the resilience of African food production system through the value chain approach in the context of climate change. More so, it is anticipated to facilitate the implementation of the CAADP agenda while improving ministerial coordination of regional level policy making on agriculture and food security. In consequence, since its inception, it has strengthened the capacity of farmer organisations through the adoption of agricultural health and food safety standards plus improving policy environment for market access to food.²⁹³

d) Alliance for a Green Revolution in Africa (AGRA)

Created in 2006, the AGRA was launched under the AU Commission with an overriding purpose of 'dramatically' improving African agriculture as well as increase the productivity and profitability of smallholder farmers.²⁹⁴ Consequently, it has developed to scale successful models across the value chain in four basic areas, namely, soils, seeds, policies and markets. Aside these areas, AGRA provides interventions on other cross-cutting issue that ensure merger in the agricultural value chains, particularly through partnership among African governments, civil society organisations (CSOs), the private sector and farmers. By the end of November 2014, the initiative was providing interventions to African farmers including (i) Programme for Africa's Seed Systems (PASS); (ii) Soil Health Programme (SHP); and (iii) Market Access Programme. Some of these programmes have been supported by the EU.²⁹⁵

²⁸⁸Africa-EU Partnership, 'The Africa Platform for Social Protection' (2013-2015) < <http://www.africa-eu-partnership.org/success-stories/africa-platform-social-protection-0>>.

²⁸⁹European Communities, 'Social protection for inclusive development: a new perspective in EU co-operation with Africa' (2010) < http://erd.eui.eu/media/2010/Social_Protection_for_Inclusive_Development.pdf>; European University Institute 'Final Report Social protection for inclusive development' < <http://erd.eui.eu/erd-2010/final-report/>>.

²⁹⁰Africa-EU-Partnership, 'Joint Africa EU Strategy: Action Plan 2011-2013: Introductory Part' < http://www.africa-eu-partnership.org/sites/default/files/documents/03-jeas_action_plan_en.pdf>.

²⁹¹Africa-EU-Partnership (n 288) 1.

²⁹²African Union, 'Agriculture and Food Security Division (AFSD)', (2010) available at <<http://rea.au.int/en/division/AFSD>>.

²⁹³ibid.

²⁹⁴Alliance for a Green Revolution in Africa, 'Home' <<http://agra-alliance.org/>>.

²⁹⁵Alliance for a Green Revolution in Africa, 'Soil Health Program', (2014) available <<http://www.agra.org/agra/en/what-we-do/policy-across-the-agricultural-value-chain/>>.

e) *Integrated Food Security Phase Classification (IPC)*

Originally developed in Somalia in 2004, the IPC is a standardized tool that aims at improving techniques for assessment of food crises. Thus, by having a common denominator for classifying food security, this initiative makes it easier for the AU, governments, donors and agencies to identify priorities for food assistance before they become severe. Against this backdrop, the EU has been a key funder of this initiative since 2006.²⁹⁶ Thus, within the framework of the 'Improved global governance for hunger reduction' project, the EU has provided the IPC partnership with a four-year grant extending from 2012-2015.

4. REC initiatives

a) *COMESA Agriculture Policy (CAP)*

COMESA states are cognizant of the importance that agriculture plays in the sub-region. It was against this backdrop that the Secretariat adopted the CAP. The primary objective of this policy is to achieve (i) food security responses; (ii) product marketing; (iii) plant and animal diseases control; and (vi) cooperation and coordination in agricultural policies. The strategy therefore acknowledges the need for a holistic approach that deals with key elements of agricultural development, inputs, markets, institutions as well as infrastructure. To achieve this aim, the EU in partnership with other international organisations launched the market access initiative. The programme aims at ensuring that the Eastern and Southern African (ESA) region gets a fair deal in global agricultural trade arrangements.²⁹⁷

b) *East African Community (EAC)*

The EAC Agriculture and Rural Development Policy (EAC-ARDP) and Strategy (EAC-ARDS) were developed by the EAC Secretariat to boost regional agriculture development. Additionally, in August 2011, negotiations for the development of an EAC CAADP compact was set in motion, which seeks to address the loopholes in the EAC-ARDS while providing added value to the EAC-ARDP (Rampaet *al*, 2012: vi). Thus, due to the drought and associated hunger which plagued the East African region in 2011, the EU reacted with a humanitarian aid from the earliest stages of the crisis. As of August 2011, the Union was providing around €1 billion towards addressing famine.²⁹⁸ With the Union's humanitarian aid for the region in 2011 raised from €97 million to €158 million, the funds were used by the EAC to provide food and clean water to refugees in Kenya and Somalia.²⁹⁹

c) *ECOWAS*

At the subregional level, considerable progress has been made with the implementation of the regional component of CAADP.³⁰⁰ In West Africa, the process begun with the creation of an ECOWAS Common Agricultural Policy (ECOWAP) in 2001 by the ECOWAS Ministerial Commission on Agriculture. ECOWAP thus was adopted on 19 January 2005 as the reference framework for the

²⁹⁶Foodsec, 'The Integrated Food Security Phase Classification (IPC): In a nutshell', (10 December 2014) available at <<http://www.foodsec.org/web/what-we-do/emergencies/integrated-food-security-phase-classification-ipc/en/>>.

²⁹⁷Common Market for Eastern and Southern Africa, 'COMESA Agricultural Programmes', (2014) available at <http://programmes.comesa.int/index.php?option=com_content&view=article&id=94&Itemid=1_11>.

²⁹⁸ Europa, 'The EU fights famine – and the causes of famine – in the Horn of Africa', (23 August 2014) available at <http://eeas.europa.eu/top_stories/2011/220811_en.htm>.

²⁹⁹ibid.

³⁰⁰Jeske van Seters, Dolly Afun-Ogidan, and Francesco Rampa, 'Regional approaches to food security in Africa' European Centre for Development Policy Management, Discussion Paper, No. 128d (February 2012) vii.

implementation of the CAADP Regional Partnership Compact (subsequently adopted in 2009). The prime objective of ECOWAP was to (i) enhance food security for the people in the region; (ii) involve producers in markets; (iii) intensify production systems in sustainable manner; (iv) reduce food dependence and achieving sovereignty; while (v) adopting appropriate funding mechanism for agricultural production.

Yet, for purposes of implementation, ECOWAS leaders adopted the Regional Investment Plan (PRIA) between 2011-2015, of which they committed to contribute USD 150 million of the estimated USD 900 million.³⁰¹ It is therefore anticipated the EU and other international partners will provide the remaining USD 750 million for the project (van Seters, 2012).

Further there is an ongoing process for the setting up of a Regional Fund for Agriculture and Food (ECOWADF) and Regional Agency for Food and Agriculture (RAFA) to facilitate the implementation of PRIA. Yet, though certain activities and sub-programmes strategised under the ECOWAP/CAADP and related food security initiatives have been commenced, their operationalisation has been slow due to lack of financial and personnel capacities.

Food and fisheries production are the major challenges confronting West Africa, particularly with regards to food security and employment. This situation worsened particularly by the decrease in rainfall during the winter 2007-2008, leading to poor harvest in several part of the region. This shortcoming led to higher prices of imported food, specifically cereals. Therefore, on the 16 July 2014, the EU provided a financial support towards the implementation of an ECOWAS 'Regional Food Security Reserve'. The initiative among others consists of operationalising a food security storage strategy to forestall or manage food emergencies. With a sum of €4.8 million from the Union, the sub-regional organisation is expected to implement the 'Aid support scheme for the decision and reinforcement of the capacities of the Regional Agency for Agriculture and Food' which seeks to address the frequency and increasing gravity in of food and nutritional crises in the West African countries.³⁰²

d) Intergovernmental Authority on Development (IGAD)

The Horn of Africa has been considered as the most food insecure part of Africa, with approximately 70 million individuals facing chronic hunger.³⁰³ For this reason, the IGAD Food Security Strategy was adopted in 1990 as a detailed programme for strengthening the region's food security. Yet, despite several initiatives being adopted,³⁰⁴ these strategies did little to reduce food insecurity in the region mainly due to lack of secure source of funding.³⁰⁵ Thus, the signing of the 2000 Cotonou Agreement between the EU and the ACP countries was envisaged as one of the remedies for addressing this shortfall. The agreement affirmed food security as a key component within the context of the MDGs.

In light of the abovementioned commitment, the European Commission and EU member states have provided financial support for the following projects (i) implementation of a sub-regional early

³⁰¹ibid.

³⁰² Such fragilities were rampant in the 2008 as well as in 2012. See Brussels Office Weblog. (Brussels Office Weblog, 2014).

³⁰³Abdel R. E. B. Mohamed and Samuel Zziwa, 'IGAD Food Security Strategy 2005-2008' IGAD Publication (2005) ix.

³⁰⁴ See Comprehensive Africa Agriculture Development Programme, the ACP-EU Cotonou Agreement and UN-Secretary General's Horn of Africa Initiative.

³⁰⁵Mohamed and Zziwa (n 303) x.

warning system (US\$ 2.110 million); (ii) conducting of food security issues focusing on grain marketing (US\$ 0.425 million); (iii) training for the monitoring of range and livestock resources by remote sensing in Arid and semi-arid lands (ASALs) (US\$ 2.500 million); (iv) development of afforestation systems for dryland areas (US\$6. 000 million) and training in improved water irrigation management (US\$ 2.470 million).³⁰⁶

Further, the Union has provided both political and financial supports to the IGAD Secretariat in addressing the ongoing famine crisis in South Sudan. Thus, considering that approximately 3.7 million people are severely food insecure in the country since the outbreak of the conflict in mid-December 2013, the EU and its member states have pledged a financial package to the tune of € 110 million so far.³⁰⁷

e) Southern African Development Community (SADC)

The primary objective of food security in SADC region is sustainable access to adequate and safe food at all times. However, over the last decade, pests and diseases, drought, poverty and chronic disease have resulted in chronically inadequate food availability as well as lack of nutrition value. Against this backdrop, the organisation has adopted two key initiatives which seek to address food insecurity, namely, the (i) Dar-es-Salaam Declaration on Agriculture and Food Security in the SADC Region; and (ii) SADC Action on Food Security.

Against this background, the Preferential Trade Agreements (PTA) established between the EU and the SADC countries has enhanced trade and free flow of goods among the countries by lowering tariffs for selected goods on a common list. These goods include fertilizer, sugar, cashews, tea and coffee. This step has contributed to the reduction in food insecurity in the region.

In March 2013, the PTA was subsequently complemented by the signing of the 'Regional Economic Integration Support Programme (REIS)' between the EU and the SADC Secretariat. With the overarching aim of reducing poverty and ensuring food security, the four year programme was financed to the tune of €19.6 million under the 10th EDF (SADC, 2012). Thus, the Sanitary and Phytosanitary (SPS) Measures as a component of the REIS creates awareness among farmers and exporters in SADC on SPS measures relevant to products traded within and outside the region.³⁰⁸ The initiative further seeks to harmonize SADC's SPS measures in line with international standards. This will in turn address the significant loss of potential traded revenue resulting from lack of compliance with SPS measures which undermines trade.

5. EU initiatives

As a 'global player' in human rights,³⁰⁹ the EU has continued to play a principal role in addressing African hunger and malnutrition, particularly through EU aid and development programmes which support supra-national agents such as the AU. Through article 21 of the TEU, the Union and its member states have made continuous pledges to include development objectives in their relations with third

³⁰⁶Mohamed and Zziwa (n 303) 58.

³⁰⁷Radio Tamazuj 'EU warns "significant risk of famine" in South Sudan' (7 March 2014) available at <<https://radiotamazuj.org/en/article/eu-warns-%E2%80%98significant-risk-famine%E2%80%99-south-sudan>>.

³⁰⁸ The sanitary and phytosanitary (SPS) measures seeks to promote safer markets for agricultural commodities and agro-processed goods.

³⁰⁹ Jan Wetzel (ed.) *The EU as a 'Global Player' in Human Rights?* Routledge (2012).

countries, particularly in the area of food security. This legal obligation is underpinned by the European Consensus on Development (ECD), signed by the EU and its member states in 2005. Further, in 2009, the Union adopted its Policy Coherence for Development (PCD) Work Programme 2010-2013 which sets out key thematic areas for engagement with third countries. With agri-food and fisheries as a priority area for the PCD, the EC adopted six principal policy areas to enhance their effective realization. These policies were accompanied with a set of targets and respective performance indicators with the objective facilitating their impact on the ground.

Further in 2010, the EU put in place a Food and Nutrition Security Implementation Plan towards ensuring a harmonized EU-wide approach, with specific focus on six key priorities, namely: (i) enhance nutrition; (ii) resilience building; (iii) strengthen social protection mechanisms; (iv) improve smallholder resilience and rural livelihoods; (v) boost effective governance; and (vi) strengthen regional agriculture and food security policies.³¹⁰ Consequently, with the aim of shaping the EU's food security policy towards third countries *inter alia* in Africa, strategies to strengthen global food security, nutrition and resilience were adopted in 2011.³¹¹ The next sub-section provides an outline of the various policies adopted under the aegis of the AU-EU partnership to address food security.

While sustained progress has been made in many regions in achieving MDG goal I, the EU Agenda for Action on MDGs adopted on 24 June 2008, observed that chronic hunger persisted especially in sub-Saharan Africa. The paper calls on all donors (EU institutions and member states) to meet their respective aid commitments towards improving the financing gap for meeting the MDGs and alleviating starvation. This calls for an immediate and sustained action to be taken by the EU particularly in light of the south-south cooperation in leveraging the development gap between the two continents.

The EU emphasized the significance of a country-based model, established on a solid country ownership, which is relevant for enhancing aid harmonization. Agriculture was identified as one of the priority areas of the Agenda which is envisaged as a key component of the 2007 JAES.³¹²

Regarding food intervention, the EU affirmed to address soaring food prices through assistance to improve farmers' access to agricultural inputs, food assistance, social transfers and safety nets as well as intervention in using market-based risk management instruments. The paper further affirms the EU's commitment to bridge Africa's financing gap in areas of agriculture, food security and rural development. This step is anticipated to result in an annual increase in agricultural productivity of 6 percent (which is synonymous with the target set by the AU). The paper further affirmed the EU's support to the CAADP framework as well as strengthening of agricultural research and policy development at both national and regional levels in Africa.

The EU has adopted a number a number of other initiatives such as the EU Action Plan to Reduce the Number of Stunted Children by 7 Million by 2025 which is linked to the CAADP nutrition country papers. The EU Action Plan on Agricultural Commodities, Dependence and Poverty seeks to provide intervention for countries and producers dependent on commodities such as coffee, cocoa, cotton

³¹⁰European Centre for Development Policy Management (n 275) vii.

³¹¹*ibid.*

³¹² Council of the European Union, 'The EU as a global partner for pro-poor and pro-growth development: EU Agenda for Action on MDGs', Brussels, 24 June 2008, 3.

and sugar. The objective is to increase the earnings of African producers of these crops and reducing the vulnerability of incomes at both producer and macroeconomic levels.³¹³

The Food Security Thematic Programme (FSTP) provides food and nutrition interventions for the most vulnerable and world poorest populations. The FSTP has three strategic priorities, namely, through (i) research, technology transfer and innovation; (ii) strengthened governance approaches; and (iii) addressing food security for the poor and vulnerable in fragile situations.

The EU Rapid Response to Food Prices Facility established in 2008 by the EU Parliament is aimed at (i) strengthening production capacity as well as agricultural governance in fragile states; (ii) improving availability and access to food products for vulnerable persons; and (iii) support food price stability.

The EU and its member states have over the years donated a considerable amount of food aid to fragile states in Africa.³¹⁴ The European Commission and several member states including Belgium, Netherlands, France, Germany and Ireland through the ECHA provide financial support to the AU and a range of NGOs to procure food in both emergency and non-emergency contexts as a way of supporting the growth of agriculture and livelihoods in AU states. The EC's Humanitarian Aid and Civil Protection Department (ECHO) provides intervention in the form of seasonal cash transfers and other interventions.³¹⁵

6. Joint initiatives

a) EAU4Food

Funded by the 7th Framework Programme (FP7) of the EU, this is a cooperative research partnership between the EU and the AU to increase the production of food in irrigated farming systems in the African region. The initiative aims to address the enormous setbacks facing African agriculture through development of innovations. Aligning the geographical division of the region, the initiative is operationalised in four irrigated zones, namely, East Africa (Ethiopia), West Africa (Mali), Southern hemisphere (Mozambique and South Africa) and Northern hemisphere (Tunisia).

The scheme broadly encompasses capacity building programmes *inter alia* scientific publications, policy briefs, presentations, school programmes and training of farmers by scientific personnel. At each site, primary indicators, biophysical parameters and farm strategies are carefully observed for identification of existing challenges to food security.

It is anticipated that the innovation will impact significantly on wider policy processes at trans-national and national levels as well as agricultural production at farm levels. Consequently, this initiative will respond to the crises situation in Africa such as worsening poverty which resulted due to the hike in food prices in 2007 and 2008.

³¹³European Commission 'New EU Action Plan on Agricultural, commodities, dependence and poverty and a specific action for cotton'(2014) available at <https://ec.europa.eu/europeaid/sites/devco/files/publication-action-plan-for-agriculture-and-cotton-200405_en.pdf>.

³¹⁴Paul Harvey, Karen Proudlock, Edward J. Clay, Barry Riley, and Susanne Jaspars, *Food aid and food assistance in emergency and transitional contexts: a review of current thinking* (2010) 2.

³¹⁵European Commission, 'AGIR—Building Resilience to food and nutrition crisis in the Sahel & West-Africa', ECHO Factsheet (2014) 4.

b) Global Alliance for Resilience (AGIR)

Launched in December 2012 in Ouagadougou, AGIR aims at achieving 'Zero Hunger' in the West Africa and the Sahel. The EU was a key partner in the establishment of the scheme. It was officially launched following a high-level meeting hosted by the EU on 18 June 2012 where the idea of an international alliance was presented. The alliance is composed of stakeholders from ECOWAS, West African Economic and Monetary Union (UEMOA), Committee for Drought Control in the Sahel (CILSS) and the EU.³¹⁶ The Union has subsequently been instrumental in its implementation, particularly through a continued financial and technical support (European Commission, 2014c). The four pillars of the programme are (i) improving the social protection for the most vulnerable households and communities; (ii) strengthening governance for food and nutritional security; (iii) improve vulnerable households' access to food; and (iv) strengthening nutrition of vulnerable households. Following the adoption of the AGIR Regional Road Map on 9 April 2013 in Paris, the EU development aid Commissioner affirmed that the Union will commit €1.5 billion in funding for resilience in the 17 West African countries under the 11th EDF between 2014 and 2020.³¹⁷

7. Conclusions

Even though the EU has made reasonable progress in establishing norms and initiatives fundamental for Africa's food security, challenges still persist in the operationalization of EU-AU agricultural partnership. Interventions in the form of financial support for African-developed programmes are welcome but the impact of EU policies such as the CAP and negotiation over EPAs on food security must also be considered.³¹⁸ Agricultural rules linked to trade agreements may impact African farmers negatively in their access to the European market or in extreme cases even lead small-scale farmers to being prohibited from sowing seeds generated by them.³¹⁹

B. Human rights defenders³²⁰

1. Introduction

By fighting for the advancement, fulfilment and recognition of human rights, human rights defenders (HRD) are essential components to ensuring the universality of human rights. HRD are individuals or groups of individuals who promote and strive for the protection and realisation of human rights and fundamental freedoms at the national or international levels.³²¹ By their actions, HRD therefore help ensure that the lofty obligations undertaken by governments at the international level are respected domestically. This important domestic role of HRD has been recognised up to the level of the United Nations (UN) through the UN Declaration on Human Rights Defenders as well as the subsequent appointment of the UN Special Rapporteur on the situation of Human Rights Defenders.³²² At the

³¹⁶ Global Alliance for Resilience 'Global alliance for resilience-Sahel and West Africa' (9 April 2013) <http://www.oecd.org/site/rpca/agir/AGIR%20plaquette_EN_pagebypage.pdf>.

³¹⁷ European Commission (n 315) 4.

³¹⁸ Olivier De Schutter, and Kaitlin Y. Cordes (eds.) *Accounting for hunger: the right to food in the era of globalisation*. Bloomsbury Publishing, 2011, 137-192.

³¹⁹ See the 1991 International Convention for the Protection of New Varieties of Plants.

³²⁰ See also the case study in relation to human rights defenders in D5.1.

³²¹ Art 1 of the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

³²² United Nations 'Human Rights Defenders: protecting the right to defend human rights' (2004) 18.

same time, due to the nature of their activities, HRD often find themselves under attacks from both state and non-state actors, who feel threatened by the questions raised by HRD and by the subsequent empowerment of the people through increased access to information and a growing consciousness. HRD and members of their entourage therefore find themselves at risk of attacks in more than eighty countries in the world.³²³

In recognition of the role played by HRD and in a bid to ensure their safety, the EU has focused its attention on the plight of HRD in the world. One of the best examples is the adoption in 2004 and the subsequent revision in 2008 of the European Union Guidelines on Human Rights Defenders. Over the years, these Guidelines have been complemented by country specific strategies on human rights, the creation of posts devoted to HRD in the EU delegations and the provision of financial assistance through the EIDHR.³²⁴ Other Guidelines issued by the EU such as the 2014 EU Human Rights Guidelines on Freedom of Expression Online and Offline, the 2013 Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons, the 2013 Guidelines on the promotion and protection of freedom of religion or belief, the 2012 Guidelines on torture and other cruel, inhuman or degrading treatment or punishment and the 2008 Guidelines on violence against women and girls and combating all forms of discrimination against them also support HRD directly or indirectly. Alongside, the EU has always aimed at promoting regionalism. Being itself a product of the process of regionalism, the EU has sought to further inter-regional relations by encouraging the set-up and the professionalisation of regional intergovernmental organisations (IOs) around the world.³²⁵ In this context, it is of no surprise that the EU has sought to advance both agendas by advancing the protection of HRD through intergovernmental organisations.

This section will investigate how the EU has interacted with African IOs for the benefit of HRD through two main initiatives: the JAES and the Cotonou Agreement as well as through the dialogues instituted with sub-regional African IOs. The position put forward by the EU towards HRD will be contrasted with the practical results obtained. In order to obtain as clear a picture as possible, this case study will start by reviewing the instruments adopted by the EU and African IOs for the express benefit of HRD.

2. Instruments adopted by the EU

a) EU Guidelines on Human Rights Defenders

The aim of the EU Guidelines on HRD is to provide practical suggestions on how the position adopted towards HRD by the EU can be put into action for an enhanced protection of the human rights of HRD. In its relationship with third party states, the EU thus aims at influencing those states towards protecting HRD. States are to be encouraged to adhere and comply with the relevant international norms and obligations, in particular with the UN Declaration on Human Rights Defenders. The Guidelines are applicable in contacts with third countries as well as in multilateral fora.³²⁶ According to the Guidelines, the political dialogues between the EU and regional organisations must, where

³²³ World Organisation Against Torture 'The Observatory for the Protection of Human Rights Defenders' <http://www.omct.org/human-rights-defenders/observatory/>.

³²⁴ The European Instrument for Democracy and Human Rights (EIDHR) is a financial instrument through which the EU supports human rights and democracy projects worldwide, without the prior consent of the third state. Support to human rights and HRD is the first objective behind the EIDHR. For the period 2014-2020, the EU has allocated more than €1.3 million under the EIDHR. Article 10 of Regulation (EU) No 235/2014 of the European Parliament and the Council.

³²⁵ Juha Jokela 'The G-20: a pathway to effective multilateralism?' Institute for Security Studies, (2011), 66.

³²⁶ Para 1 of EU Guidelines on Human Rights Defenders.

relevant, focus on HRD. The EU support to HRD and their work is to be underlined as well as individual cases of concern raised. Regional mechanisms which aim at protecting HRD are also to be strengthened or created when non-existent.

In June 2014, on the occasion of the 10th anniversary of the adoption of the EU Guidelines on HRD, the Council of the European Union issued a number of conclusions. While noting with satisfaction the increase in effectiveness and coherence of the EU's actions towards HRD since the adoption of the Guidelines, the Council pointed out to the shrinking space available to HRD in numerous states as well as to new dangers such as online surveillance. The Council also highlighted the role and importance of international mechanisms in protecting HRD such as those set into place by the AU.³²⁷

b) Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons

The 2013 Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons were enacted in reaction to the discrimination, social as well as legal, suffered by LGBTI persons in numerous parts of the world. These Guidelines recognise the special vulnerability faced by HRD working towards advancing the human rights of LGBTI persons.³²⁸ As such, officials of EU institutions and EU member states are encouraged to raise the issue of the human rights of LGBTI in the human rights component of political dialogue, with special attention being paid to cases of proven or alleged violations on the persons of HRD.³²⁹

c) EU Human Rights Guidelines on Freedom of Expression Online and Offline

The 2014 EU Human Rights Guidelines on Freedom of Expression Online and Offline aims at providing political and operational guidance to EU officials as well as to EU member states in their interaction with third parties and in international fora on the topic of freedom of expression.³³⁰ Recognizing that human rights are indivisible, the 2014 Guidelines are to be read in conjunction with previously written guidelines.³³¹ The Guidelines point out to the EU support for the work of the AU Special Rapporteur on Freedom of Expression, wishing to encourage strong cross-regional support on the matter.³³²

3. Instruments adopted by African IOs

a) Grand-Bay (Mauritius) Declaration and Plan of Action

The Grand-Bay (Mauritius) Declaration and Plan of Action was adopted at the First OAU Ministerial Conference on Human Rights in April 1999. The Conference recognised that the development and energisation of the civil society should be seen as the building blocks in the construction of an environment respectful of human rights. It also noted the adoption of the UN Declaration on the

³²⁷ European Union Delegation to the United Nations-New York 'EU Council conclusions on 10th Anniversary of EU Guidelines on Human Rights Defenders' (2014) http://eu-un.europa.eu/articles/en/article_15216_en.htm.

³²⁸ Para 4 of the 2013 Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons.

³²⁹ Para 31(7) & 32 of the 2013 Guidelines to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Persons.

³³⁰ Para 9 of the EU Human Rights Guidelines on Freedom of Expression Online and Offline.

³³¹ Para 8 of the EU Guidelines (n 330).

³³² Para 52 of the EU Guidelines (n 330).

Protection of Human Rights Defenders by the UN Commission on Human Rights, calling it a 'significant turning point'. Member states were encouraged to take appropriate steps towards the implementation of the Declaration in Africa. States were also urged to guarantee a free and independent press so as to enable the latter to perform its role as a promoter and protector of human rights.

b) Kigali Declaration

The Kigali Declaration was adopted by the first AU Ministerial Conference on Human Rights in Africa in May 2003. The Declaration recognises the important role of civil society organisations and particularly of HRD in the promotion and protection of human rights. It calls upon both member states and regional organisations to protect them. By transforming the protection of HRD into not only a national, but a regional concern, ministers of AU member states have shown that they recognise the important role played by HRD. States were again called upon to guarantee the freedom of the media through appropriate legislative and policy measures.

c) Resolutions of the African Commission

The 2002 Declaration of Principles on Freedom of Expression in Africa recalled the importance of freedom of expression and access to information for greater public transparency and accountability, good governance and a strengthened democracy in Africa.³³³ States were reminded of their obligation to prevent, investigate and punish any attack upon the media.³³⁴

The 2004 Resolution on the Protection of Human Rights Defenders in Africa built upon the Grand Bay and Kigali Declarations but focused exclusively on HRD. Recognising the contribution of HRD in the areas of human rights, democracy and rule of law and noting with concern that HRD are negatively impacted through threats, attacks and acts of intimidation, the African Commission also appointed a Special Rapporteur on human rights defenders through this declaration. Members of the Commission were furthermore called upon to mainstream the issue of HRD in their activities.

The Resolution on the mandate and appointment of a special rapporteur on freedom of expression in Africa was passed in 2004. The Special Rapporteur on Freedom of Expression in Africa was granted the mandate to make public interventions where violations to the right to freedom of expression were brought to his notice.

The 2011 Resolution on Human Rights Defenders in Africa was more explicit than the 2004 Resolution. This might have been brought upon by the recognition that the working environment of HRD in Africa is still fraught with persistent acts of arbitrary arrest and detention, acts of harassment, extra-judicial executions and acts of torture. In this resolution, states were called upon to recognise the role played by HRD and encouraged to adopt specific legislations for their protection. The release of arbitrarily detained HRD was also called for as well as the initiation of independent investigations and prosecutions in cases of violations on the person of HRD.

4. The AU-EU human rights dialogue and HRD

The JAES provides for a structured AU-EU human rights dialogue, allowing for an exchange of views on human rights issues of concern to both sides as well as for the sharing of best practices. This formal dialogue is recognised as the 'key framework for dialogue' in the JAES on issues of human rights

³³³ Preamble para 4 of the 2002 Declaration of Principles on Freedom of Expression in Africa.

³³⁴ Art 11(2) of the 2002 Declaration of Principles on Freedom of Expression in Africa.

between Europe and Africa.³³⁵ There has been a regular dialogue since 2008 and every annual dialogue has focused on rights of particular concern to HRD. In 2009 in Addis Ababa, both parties agreed to cooperate further in the mapping of legislation regarding civil society organisation as agreed in the human rights dialogues of April 2009.³³⁶ This shows a degree of follow-up effected by both parties, thereby pointing to a higher probability for the transformation of declarations into actions. In 2010, the dialogue included freedom of association and expression as issues of common concern.³³⁷ In 2011 in Senegal, both parties reaffirmed the importance of collaboration on key issues such as the protection of HRD. Within the framework of the Dialogue, a working group met in Tunis in December 2011 to discuss freedom of expression, with an emphasis on the role of the media in the promotion of democratic change. The following year, in November, the dialogue in Addis Ababa identified freedom of association as a theme on which cooperation should be intensified.³³⁸ In 2013 in Belgium, focus was again placed on freedom of association through a common agreement to organise a workshop as well as the pledge by the EU to support the activities of the ACHPR Working Group on Freedom of Association.

The inclusion of these rights of special concern to HRD is in keeping with the policy of the EU which considers freedom of expression, the role of civil society and the protection of HRD as priority issues that should be included in every dialogue.³³⁹ It is also quite encouraging for African HRD to see those rights included as issues of common concern rather than being a one-sided dialogue. The presence of civil society representatives at some of the dialogues also show the value placed on CSOs by both parties.³⁴⁰ It ensures that the rights of concern to civil society such as freedom of expression and freedom of association remain primary focuses. Additionally, their presence help ensure accountability: CSOs have a special interest in holding both parties accountable to any declaration or decision taken in support of HRD. The EU-AU dialogue is however not without flaws. The EU-AU dialogue is mainly concerned with the broader picture on both continents such as the adoption of common positions, overall policies and reciprocal developments in the area of human rights. The dialogue is not concerned with country-specific situations.³⁴¹ Immediately this shows a great lacuna as the EU and the AU cannot decide jointly to apply diplomatic pressure or sanctions upon a member state which violates the right of HRD. Most violations occur at country-level and the inability to discuss specific countries is a great blow to the practical ability to effect change by the EU-AU dialogue.

5. Dialogue with states under the Cotonou Agreement

Created under article 8 of the Cotonou Agreement, human rights dialogues provide for the respect for human rights as a basis for continued assessment. The 'comprehensive, balanced and deep political dialogue' has the potential to be a driver for change by confronting African states to new norms and

³³⁵ Fourth EU-Africa Summit 'Roadmap 2014-2017' (2014) Para 20 http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/142094.pdf.

³³⁶ Council of the European Union 'EU-AU Human rights dialogue Addis Ababa, 20 November 2009 Joint communique' (2009).

³³⁷ Council of the European Union '6th African Union-European Union human rights dialogue, Brussels 7 may 2010' (2010).

³³⁸ '2 unions, 1 vision- The Africa-EU partnership' 10.

³³⁹ Agriculture and Fisheries Council 'EU guidelines on human rights dialogues with third countries – Update' (2009) 6 <https://www.consilium.europa.eu/uedocs/cmsUpload/16526.en08.pdf>.

³⁴⁰ Nicolas David, Mary Dowell-Jones, Mary Footer, Jeffrey Kenner, MaijaMustaniemi-Laakso, Aoife Nolan, and PetrPribyla 'Report on the positive and negative human rights impacts of non-state actors' (2014) 82.

³⁴¹ Evaluation Unit of Directorate-General for International Cooperation and Development 'Thematic evaluation of the European Commission support to respect of human rights and fundamental freedoms (including solidarity with victims of repression)' (2011) 30.

by challenging rigid power structures. It is unfortunate that the AU is not invited and therefore not present during those political dialogues. The plight of HRD has been raised in this context with countries such as the Gambia,³⁴² but neither the AU nor any other sub regional organisations were included. The exclusion of the AU from those dialogues prevents a country-specific focus as well as prevents any follow-up by the AU.

Political dialogue has however been taking place with the AU, but has until now focused on issues of peace and security only rather than human rights. This is in accordance with the Cotonou Agreement itself where the role of the AU in the political dialogue is only explicitly mentioned with regards to the objectives of peace and democratic stability.³⁴³

6. The African Union Support Programme

The African Union Support Programme providing support to among others the African Commission and African Court is important in order to strengthen these bodies. The African Commission has in the past recognised the 'crucial contribution of the work of human right defenders' and in recognition of this created the post of the Special Rapporteur on Human Rights Defenders in Africa.³⁴⁴ The African Commission has also rendered opinions which support the rights and freedoms of HRD such as in *Huri-Laws v Nigeria* where the harassment endured by the employees of an NGO and the raid on their office were deemed a violation of the right to freedom of expression and of association as guaranteed under the African Charter.³⁴⁵ Some of the early cases of the African Court have dealt with issues clearly linked to HRD such as, the right to freedom of association,³⁴⁶ the right to freedom of expression and the punishment of defamation under criminal law.³⁴⁷

7. Areas of concern

The 2014-2017 JAES roadmap, which structures continent-to-continent cooperation by setting out the keys priority areas, does not include the protection of HRD as a key area of cooperation. This is but a continuation of the situation applicable upon the adoption of the 2011-2013 Action Plan of the JAES, where the protection of HRD was also not mentioned. The first 2008-2010 Action Plan of the JAES did however have as one of its four objectives the empowerment of non-state actors and the creation of an enabling environment to enable them to play an active role in democracy building and development.³⁴⁸ The protection of HRD was however not mentioned in the priority activities towards enhancing dialogue in the area of human rights, although other rights such as the children rights and women rights were explicitly mentioned.³⁴⁹ Additionally, the role, power and driving force of the AU must also not be overstated in the cooperation. For the 2014 Summit, Egypt which is suspended from the AU and Morocco who left the organisation twenty years ago were invited. Responding to these concerns, EU officials replied that this is precisely the reason why the Summit is named Africa-EU

³⁴² Star Africa 'EU raises rights violations issues with Gambia' 15 July 2013 <http://en.starafrika.com/news/eu-raises-rights-violation-issues-with-gambia.html> (accessed 4 November 2014).

³⁴³ Art 8(5) of the Cotonou Agreement.

³⁴⁴ African Commission '69: Resolution on the Protection of Human Rights Defenders In Africa' (2004) <http://www.achpr.org/sessions/35th/resolutions/69/>.

³⁴⁵ *Huri-Laws v Nigeria* (2000) AHRLR 273 (ACHPR 2000).

³⁴⁶ *Tanganyika Law Society et al v The United Republic of Tanzania consolidated with Mtikila and others v Tanzania* Application No. 009(2011) & 011(2011) Judgment.

³⁴⁷ *Konaté v Burkina Faso* Application No. 004 (2013) Judgment.

³⁴⁸ Para 8(iv) of the 2008 Africa-EU Strategic Partnership.

³⁴⁹ Annex II of the Africa-EU Strategic Partnership (2008) 52-53.

rather than AU-EU.³⁵⁰

8. Conclusion

The above discussion sketched a brief overview of the EU engagement with Africa in the area of HRD. The EU has recognised the importance of advancing the cause of HRD and civil society in Africa through diplomacy as well as through the grant of funds. However, more can be done and civil society has made repeated calls to that effect. A recent memorandum issued by Human Right Watch (HRW) called on the EU-AU human rights dialogue to focus on the plight of human right defenders in Africa and on the violations of the related rights to freedom of association, expression and peaceful assembly.³⁵¹ In fact, this call is not the first of its kind. In 2007, before the AU-EU Lisbon Summit, the Observatory for the Protection of Human Rights Defenders called on both parties to concentrate on the plight of HRD and to call for an end of any kind of repression and oppression against them.³⁵² These repeated calls of themselves show that the efforts of both the EU and the AU could be improved. Both the EU and the AU must not shy away from engaging African countries on specific cases of concern, rather than remaining on a general level.

³⁵⁰Nicholas Kotch 'Zuma withdraws from Africa-EU summit' 1 April 2014 Bdlive<http://www.bdlive.co.za/national/2014/04/01/zuma-withdraws-from-eu-africa-summit>.

³⁵¹ Human Rights Watch 'Memorandum on human rights priorities for the European Union-Africa summit' (2014) <http://www.hrw.org/news/2014/03/31/memorandum-human-rights-priorities-european-union-africa-summit>.

³⁵² Observatory for the Protection of Human Rights Defenders 'Strategy EU-Africa Supporting human rights defenders in sub-Saharan Africa' translated from 'Stratégie UE-Afrique Soutenir les défenseurs des droits de l'Homme en Afrique subsaharienne' (2007).

VIII. Conclusions

The report has explored how the relationship between the EU and the AU and other African regional IOs has become more equal in recent years and that Africa is now treated as one unit, represented by the AU. The main vehicle for this renewed partnership is the Joint Africa-EU Strategy which was adopted in 2007, two years after the EU Strategy for Africa, which provided that EU should work through African institutions. The AU on its side has worked on creating greater coherence among its governance institutions through the AGA. However, in part due just to the sheer number of actors involved in EU-Africa relations, including EU and AU member states, AU institutions, RECs and civil society actors, it is not surprising that challenges remain in relation to making the relationship functioning effectively.

The main human rights priorities of the EU are set out in eleven thematic human rights guidelines. One of the ways in which the EU tries to influence human rights practices is through human rights dialogue. While human rights dialogue generally takes place with third states human rights is also a topic in political dialogue with international organisations. The formal human rights dialogue which takes place at the political level between the EU and AU has become less confrontational in recent years as the EU no longer tries to impose the agenda as both parties have agreed to discuss the topics of concern to the other side.³⁵³

The first official evaluation of the strategy by the two Commissions was still pending at the time of writing.³⁵⁴ A 2014 study commissioned by the European Parliament notes that there is a lack of 'political traction because of serious divergence on trade, international justice, governance and cultural cooperation'.³⁵⁵

The lack of consistency in EU-Africa relations can perhaps be most clearly seen in relation to migration to the EU, an issue that the EU has not been very interested in discussing with the AU at a multilateral level, preferring bilateral discussions.³⁵⁶ However, it should be noted that the EU in recent years have become more open to discuss agenda points put forward by both sides.³⁵⁷ The move from a technical to a political dialogue, with the Commissioner for Political Affairs leading the AU delegation and the EU Special Representative on Human Rights leading the EU delegation, has however not only been positive as meetings have often been postponed due to scheduling problems.³⁵⁸

With regard to effectiveness, it is clear that the EU and the AU and other African IOs share a commitment to human rights. However, the commitment of many AU member states remains more rhetorical than practical. With regard to finding common positions on human rights issues for example in UN bodies, the partnership has not been very successful. There are clearly underlying differences between the two sides with regard to issues such as international criminal law and LGBTI rights. In terms of financing the main focus is on security but the EU and its member states are major contributors to strengthening the African governance institutions. However, coordination among

³⁵³ Interview with AU official, May 2015.

³⁵⁵ European Parliament, Directorate-General for External Policies, Policy Department 'The implementation of the Joint Africa Europe Strategy: Rebuilding confidence and commitments', EXPO/B/AFET/2013/42, April 2014.

³⁵⁶ Interview with AU official, May, 2015.

³⁵⁷ Ibid.

³⁵⁸ Ibid.

donors could be better. The AU is trying to move away from being overly dependent on donors but the commitment of member states to the AU institutions could clearly be improved. As an example the programme activities of the African Commission on Human and Peoples' Rights is completely funded through donors.

The report illustrate through two case studies how the EU and its member states have engaged the AU and other African IOs on two human rights related issues, improved food security and the protection of human rights defenders. The issue of food security illustrate well the lack of consistency in the EU's approach to Africa where it is promoting access to the right to food through support to numerous initiatives on the continent but at the same time may contribute to limiting access to food for some groups through policies such as the common agricultural policy and positions taken in relation to negotiations over the economic partnership agreements. The case study on human rights defenders illustrate how the dialogue between the EU and AU has inadequately dealt with an issue that should be high on the EU's agenda in light of its human rights guidelines and where the AU clearly also has shown a commitment at the level of adoption of human rights instruments. However, in practice violations of the rights of human rights defenders continue unabated illustrating the limits of both bilateral and multilateral human rights dialogue.

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